

MICHAEL KAUFMAN(SBN 254575)  
mkaufman@aclu-sc.org  
AHILAN T. ARULANANTHAM (SBN 237841)  
aarulanantham@aclu-sc.org  
ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
1313 West 8th Street  
Los Angeles, CA 90017  
Telephone: (213) 977-5232  
Facsimile: (213) 977-5297

*Attorneys for Plaintiffs-Petitioners*

*Additional Counsel listed on following page*

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

XOCHITL HERNANDEZ,  
CESAR MATIAS, for themselves  
and on behalf of a class similarly-  
situated individuals,

Plaintiffs-Petitioners,

v.

JEFF SESSIONS, U.S., Attorney  
General, et al.,

Defendants-Respondents.

CIVIL ACTION NO. 5:16-00620-JGB-KK

**DISCOVERY MATTER**

**JOINT STIPULATION UNDER  
LOCAL RULE 37-2**

Date: December 7, 2017

Time: 10:00 a.m.

Judge: The Honorable Kenly Kiya Kato

Discovery Cutoff Date: April 27, 2018

Pretrial Conference Date: August 13, 2018

Trial Date: August 28, 2018

1 MICHAEL TAN (*pro hac vice*)  
mtan@aclu.org  
2 JUDY RABINOVITZ (*pro hac vice*)  
jrabinovitz@aclu.org  
3 AMERICAN CIVIL LIBERTIES FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
4 125 Broad Street, 18th Floor  
New York, NY 10004  
5 Telephone: (212) 549-2618  
Facsimile: (212) 549-2654

6 STEPHEN KANG (SBN 292280)  
skang@aclu.org  
7 AMERICAN CIVIL LIBERTIES FOUNDATION  
8 IMMIGRANTS' RIGHTS PROJECT  
39 Drumm Street  
9 San Francisco, CA 94111  
Telephone: (415) 343-0779  
10 Facsimile: (415) 395-0950

11 MATTHEW SLOAN (SBN 165165)  
Matthew.Sloan@skadden.com  
12 DOUGLAS A. SMITH (SBN 290598)  
Douglas.Smith@skadden.com  
13 MATTHEW E. DELGADO (SBN 306999)  
Matthew.Delgado@skadden.com  
14 MICHAEL D. HIDALGO (SBN 309792)  
Michael.Hidalgo@skadden.com  
15 JOHN C. KOREVEC (SBN 310157)  
John.Korevec@skadden.com  
16 Skadden, Arps, Slate, Meagher & Flom LLP  
300 South Grand Avenue, Suite 3400  
17 Los Angeles, California 90071-3144  
Telephone: (213) 687-5000  
18 Facsimile: (213) 687-5600

19 *Attorneys for Plaintiffs-Petitioners*

20

21

22

23

24

25

26

27

28

## TABLE OF CONTENTS

	<u>Page</u>
JOINT INTRODUCTORY STATEMENT AND OVERVIEW .....	1
I.    Introductory Statements of the Parties .....	1
A.    The Certified Plaintiff Class’s Introductory Statement .....	1
B.    Defendants’ Introductory Statement .....	4
DISPUTED REQUESTS .....	4
I.    GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ RFPS TO DHS AND GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ RFPS TO DOJ: .....	4
A.    Plaintiffs’ Contentions .....	5
1.    There Are Plainly Discoverable Facts Relevant to Plaintiffs’ Claims and the Government’s Defenses. ....	5
B.    Defendants’ Contentions .....	8
II.   GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ INTERROGATORIES TO DHS AND GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ INTERROGATORIES TO DOJ: .....	8
A.    Plaintiffs’ Contentions .....	9
B.    Defendants’ Contentions .....	9
III.  GENERAL OBJECTION TO RELEVANT TIME PERIOD IN PLAINTIFFS’ RFPS TO DHS; GENERAL OBJECTION TO RELEVANT TIME PERIOD IN PLAINTIFFS’ RFPS TO DOJ; OBJECTION NO. 5 TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS REGARDING RELEVANT TIME PERIOD IN PLAINTIFFS’ INTERROGATORIES TO DHS; AND OBJECTION NO. 7 TO PLAINTIFFS’ DEFINITIONS AND INSTRUCTIONS REGARDING RELEVANT TIME PERIOD IN PLAINTIFFS’ INTERROGATORIES TO DOJ: .....	9
A.    Plaintiffs’ Contentions .....	10
1.    Plaintiffs’ Relevant Time Period Coincides with the Incidents Giving Rise to the Complaint and is Not Unduly Broad .....	10
B.    Defendants’ Contentions .....	12
IV.   RFP NO. 1 TO DHS: .....	12

1	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 1 TO DHS:....	12
2	B.	Plaintiffs' Contentions .....	14
3	1.	Information Regarding Current and Former	
4		Immigrant Detainees Who Are or Were Held on	
5		Bond is Not Just Relevant, but Central to Plaintiffs'	
6		Claims and the Government's Defenses. ....	14
7	2.	Defendants Cannot Withhold Information Based on	
8		Hypothetical Assertions of Privilege and	
9		Confidentiality. ....	19
10	3.	The Government's Vague Assertions of Burden Do	
11		Not Justify Refusing to Produce the Requested	
12		Documents. ....	21
13	4.	Plaintiffs' Position on Remaining Objections. ....	25
14	C.	Defendants' Contentions.....	25
15	V.	RFP NO. 2 TO DHS: .....	25
16	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 2 TO DHS:....	26
17	B.	Plaintiffs' Contentions .....	29
18	C.	Defendants' Contentions.....	30
19	VI.	RFP NO. 3 TO DHS: .....	30
20	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 3 TO DHS:....	30
21	B.	Plaintiffs' Contentions .....	32
22	C.	Defendants' Contentions.....	33
23	VII.	RFP NO. 9 TO DHS: .....	33
24	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 9 TO DHS:....	33
25	B.	Plaintiffs' Contentions .....	35
26	C.	Defendants' Contentions.....	36
27	VIII.	RFP NO. 10 TO DHS: .....	36
28	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 10 TO	
		DHS: .....	36
	B.	Plaintiffs' Contentions .....	38
	C.	Defendants' Contentions.....	38

1	IX. RFP NO. 1 TO DOJ: .....	38
2	A. DEFENDANTS' OBJECTIONS TO RFP NO. 1 TO DOJ:.....	39
3	B. Plaintiffs' Contentions .....	42
4	C. Defendants' Contentions.....	43
5	X. RFP NO. 2 TO DOJ: .....	43
6	A. DEFENDANTS' OBJECTIONS TO RFP NO. 2 TO DOJ:.....	43
7	B. Plaintiffs' Contentions .....	44
8	C. Defendants' Contentions.....	45
9	XI. RFP NO. 5 TO DOJ: .....	45
10	A. DEFENDANTS' OBJECTIONS TO RFP NO. 5 TO DOJ:.....	45
11	B. Plaintiffs' Contentions .....	48
12	C. Defendants' Contentions.....	49
13	XII. INTERROGATORY NO. 1 TO DHS: .....	49
14	A. DEFENDANTS' RESPONSE TO INTERROGATORY	
15	NO. 1 TO DHS: .....	49
16	B. Plaintiffs' Contentions .....	53
17	C. Defendants' Contentions.....	53
18	XIII. INTERROGATORY NO. 2 TO DHS: .....	53
19	A. DEFENDANTS' RESPONSE TO INTERROGATORY	
20	NO. 2 TO DHS: .....	53
21	B. Plaintiffs' Contentions .....	56
22	C. Defendants' Contentions.....	56
23	XIV. INTERROGATORY NO. 1 TO DOJ: .....	56
24	A. DEFENDANTS' RESPONSE TO INTERROGATORY	
25	NO. 1 TO DOJ: .....	56
26	B. Plaintiffs' Contentions .....	60
27	C. Defendants' Contentions.....	60
28	XV. INTERROGATORY NO. 2 TO DOJ: .....	61

1	A.	DEFENDANTS' RESPONSE TO INTERROGATORY	
2		NO. 2 TO DOJ:.....	61
3	B.	Plaintiffs' Contentions .....	63
4	C.	Defendants' Contentions.....	63
5	XVI.	GENERAL OBJECTION NO. 3 TO PLAINTIFFS' RFPS TO	
6		DHS:.....	63
7	A.	Plaintiffs' Contentions .....	64
8	B.	Defendants' Contentions.....	64
9	XVII.	GENERAL OBJECTION NO. 3 TO PLAINTIFFS' RFPS TO	
10		DOJ: .....	64
11	A.	Plaintiffs' Contentions .....	64
12	B.	Defendants' Contentions.....	64
13	XVIII.	GENERAL OBJECTION NO. 4 TO PLAINTIFFS'	
14		INTERROGATORIES TO DHS: .....	64
15	A.	Plaintiffs' Contentions .....	65
16	B.	Defendants' Contentions.....	65
17	XIX.	GENERAL OBJECTION NO. 4 TO PLAINTIFFS'	
18		INTERROGATORIES TO DOJ:.....	65
19	A.	Plaintiffs' Contentions .....	65
20	B.	Defendants' Contentions.....	66
21	XX.	GENERAL OBJECTION NO. 2 TO PLAINTIFFS'	
22		INTERROGATORIES TO DHS: .....	66
23	A.	Plaintiffs' Contentions .....	66
24	B.	Defendants' Contentions.....	66
25	XXI.	GENERAL OBJECTION NO. 2 TO PLAINTIFFS'	
26		INTERROGATORIES TO DOJ:.....	66
27	A.	Plaintiffs' Contentions .....	66
28	B.	Defendants' Contentions.....	66
	XXII.	RFP NO. 4 TO DHS: .....	66
	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 4 TO DHS:....	67
	B.	Plaintiffs' Contentions .....	68

1	1.	Information Regarding the Government’s Policies,	
2		Procedures and General Practices Regarding	
3		Custody Determinations and other Contexts Where a	
		Person’s Ability to Pay is Considered are Relevant to	
		the Parties’ Claims and Defenses. ....	68
4	2.	Plaintiffs’ Position on Remaining Objections. ....	70
5	C.	Defendants’ Contentions. ....	71
6	XXIII.	RFP NO. 5 TO DHS: ....	71
7	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 5 TO DHS: ....	71
8	B.	Plaintiffs’ Contentions ....	73
9	C.	Defendants’ Contentions. ....	73
10	XXIV.	RFP NO. 6 TO DHS: ....	73
11	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 6 TO DHS: ....	74
12	B.	Plaintiffs’ Contentions ....	76
13	C.	Defendants’ Contentions. ....	77
14	XXV.	RFP NO. 7 TO DHS: ....	77
15	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 7 TO DHS: ....	77
16	B.	Plaintiffs’ Contentions ....	79
17	C.	Defendants’ Contentions. ....	80
18	XXVI.	RFP NO. 7 TO DOJ: ....	80
19	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 7 TO DOJ: ....	80
20	B.	Plaintiffs’ Contentions ....	81
21	C.	Defendants’ Contentions. ....	82
22	XXVII.	RFP NO. 8 TO DHS: ....	82
23	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 8 TO DHS: ....	82
24	B.	Plaintiffs’ Contentions ....	83
25	C.	Defendants’ Contentions. ....	84
26	XXVIII.	RFP NO. 6 TO DOJ: ....	84
27	A.	DEFENDANTS’ OBJECTIONS TO RFP NO. 6 TO DOJ: ....	85

1	B.	Plaintiffs' Contentions .....	86
2	C.	Defendants' Contentions.....	87
3	XXIX.	RFP NO. 11 TO DHS: .....	87
4	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 11 TO	
5		DHS: .....	87
6	B.	Plaintiffs' Contentions .....	89
7	C.	Defendants' Contentions.....	89
8	XXX.	RFP NO. 12 TO DHS: .....	90
9	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 12 TO	
10		DHS: .....	90
11	B.	Plaintiffs' Contentions .....	91
12	C.	Defendants' Contentions.....	92
13	XXXI.	RFP NO. 9 TO DOJ:.....	92
14	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 9 TO DOJ:.....	92
15	B.	Plaintiffs' Contentions .....	93
16	C.	Defendants' Contentions.....	94
17	XXXII.	RFP NO. 3 TO DOJ:.....	94
18	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 3 TO DOJ:.....	94
19	B.	Plaintiffs' Contentions .....	96
20	C.	Defendants' Contentions.....	96
21	XXXIII.	RFP NO. 4 TO DOJ:.....	96
22	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 4 TO DOJ:.....	97
23	B.	Plaintiffs' Contentions .....	99
24	C.	Defendants' Contentions.....	100
25	XXXIV.	INTERROGATORY NO. 3 TO DHS: .....	100
26	A.	RESPONSE TO INTERROGATORY NO. 3 TO DHS:.....	100
27	B.	Plaintiffs' Contentions .....	103
28	C.	Defendants' Contentions.....	104



1	XXXV.	RFP NO. 8 TO DOJ:.....	104
2	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 8 TO DOJ:...	104
3	B.	Plaintiffs' Contentions .....	106
4	1.	The Costs of Detention and Custody Determinations are Relevant to the Parties' Claims and Defenses.....	106
5	2.	Plaintiffs' Position on Remaining Objections.....	107
6	C.	Defendants' Contentions.....	107
7	XXXVI.	RFP NO. 13 TO DHS: .....	108
8	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 13 TO DHS: .....	108
9	B.	Plaintiffs' Contentions .....	109
10	C.	Defendants' Contentions.....	110
11	XXXVII.	RFP NO. 14 TO DHS: .....	110
12	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 14 TO DHS: .....	110
13	B.	Plaintiffs' Contentions .....	111
14	C.	Defendants' Contentions.....	112
15	XXXVIII.	RFP NO. 15 TO DHS: .....	112
16	A.	DEFENDANTS' OBJECTIONS TO RFP NO. 15 TO DHS: .....	112
17	B.	Plaintiffs' Contentions .....	113
18	C.	Defendants' Contentions.....	114
19	XXXIX.	INTERROGATORY NO. 4 TO DHS: .....	114
20	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO DHS: .....	114
21	B.	Plaintiffs' Contentions .....	115
22	C.	Defendants' Contentions.....	116
23	XL.	INTERROGATORY NO. 5 TO DHS: .....	116
24	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 5 TO DHS: .....	116
25			
26			
27			
28			

1	B.	Plaintiffs' Contentions .....	117
2	C.	Defendants' Contentions.....	117
3	XLI.	INTERROGATORY NO. 6 TO DHS: .....	117
4	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 6 TO DHS: .....	117
5	B.	Plaintiffs' Contentions .....	118
6	C.	Defendants' Contentions.....	118
7	XLII.	INTERROGATORY NO. 7 TO DHS: .....	118
8	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO DHS: .....	119
9	B.	Plaintiffs' Contentions .....	120
10	C.	Defendants' Contentions.....	120
11	XLIII.	INTERROGATORY NO. 8 TO DHS: .....	120
12	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 8 TO DHS: .....	120
13	B.	Plaintiffs' Contentions .....	121
14	1.	Information Regarding the Government's Statistics on Class Members' "Failure to Appear" Rates is Relevant to Whether the Immigration Judge Must Consider Alternatives to Detention in Making the Custody Determination.....	121
15	2.	Plaintiffs' Position on Remaining Objections.....	123
16	C.	Defendants' Contentions.....	123
17	XLIV.	INTERROGATORY NO. 3 TO DOJ:.....	123
18	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 3 TO DOJ: .....	124
19	B.	Plaintiff's Contentions .....	126
20	C.	Defendants' Contentions.....	126
21	XLV.	INTERROGATORY NO. 4 TO DOJ: .....	126
22	A.	DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO DOJ: .....	126
23	B.	Plaintiff's Contentions .....	127
24			
25			
26			
27			
28			

1	C.	Defendants’ Contentions.....	127
2	XLVI.	INTERROGATORY NO. 5 TO DOJ:.....	127
3	A.	DEFENDANTS’ RESPONSE TO INTERROGATORY	
4		NO. 5 TO DOJ:.....	128
5	B.	Plaintiff’s Contentions .....	129
6	C.	Defendants’ Contentions.....	129

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1                   **JOINT INTRODUCTORY STATEMENT AND OVERVIEW**

2           Pursuant to Local Rule 37-2, Plaintiffs Xochitl Hernandez and Cesar Matias,  
3 for themselves and on behalf of a certified class of similarly situated individuals  
4 (collectively, “Plaintiffs” or the “Class”), and the Department of Justice (“DOJ”) and  
5 Department of Homeland Security (“DHS,” and, together with DOJ, “Defendants” or  
6 the “Government”) submit this Joint Stipulation Regarding Plaintiffs’ Motion to  
7 Compel Responses to Plaintiffs’ Discovery Requests. In accordance with Local Rule  
8 37-1, counsel for the parties conferred at length on several occasions by telephone  
9 (due to the disparate locations of counsel) and exchanged correspondence regarding  
10 the issues in dispute set forth herein.

11 **I.     Introductory Statements of the Parties**

12           **A.    The Certified Plaintiff Class’s Introductory Statement**

13           Defendants have made several attempts—all unsuccessful—before this Court  
14 and the Ninth Circuit to stay all proceedings, including discovery, pending the  
15 determination of the Government’s appeal of the preliminary injunction granted by  
16 the Honorable Jesus G. Bernal.<sup>1</sup> But, rather than negotiating with the Class in good  
17 faith after the Ninth Circuit refused to stay all proceedings and Judge Bernal  
18 scheduled discovery,<sup>2</sup> the Government engaged in self-help, obtaining a practical  
19 stay on discovery by responding to the Plaintiff Class’s discovery requests with  
20 baseless and unsubstantiated objections. Despite the Plaintiff Class serving discovery  
21  
22

23 <sup>1</sup> See Order Den. Ex Parte Appl. to Stay All Proceedings Pending Appeal, *Hernandez*  
24 *v. Lynch*, No. 5:16-cv-00620-JGB-KK (C.D. Cal. Dec. 28, 2016), ECF No. 93; Order  
25 Den. Appellants’ Req. For An Admin. Stay Of All District Ct. Proceedings,  
26 *Hernandez v. Sessions III*, No. 16-56829 (9th Cir. Apr. 24, 2017), ECF No. 53;  
Order Den. Appellants’ Mot. for Recons., *Hernandez v. Sessions III*, No. 16-56829  
(9th Cir. May 12, 2017), ECF No. 59.

27 <sup>2</sup> See Civil Trial Scheduling Order, *Hernandez v. Lynch* (C.D. Cal. Aug. 7, 2017),  
ECF No. 113 (setting discovery timeline for this case).

1 requests nearly *four* months ago, Defendants have refused to answer a *single*  
2 interrogatory or produce a *single* document.

3 Now that the Ninth Circuit has affirmed the preliminary injunction, this case is  
4 proceeding full steam ahead toward a discovery cut-off deadline of April 27, 2018.  
5 Further, Judge Bernal has explicitly rejected the Defendants' central objection to  
6 discovery—that this case presents “purely” legal questions for which no facts are  
7 relevant—stating:

8 I think I disagree with that position [i.e., that Plaintiffs do not get  
9 discovery because this case involves purely legal issues] as a general  
10 statement, and that's why I imposed a discovery deadline as part of  
the scheduling order. So I think some discovery of some kind should  
be conducted. I don't think the case presents a purely legal issue.”

11 This Court should therefore reject Defendants' meritless objections and compel  
12 Defendants to respond to the Plaintiff Class's discovery requests to enable the Court  
13 to decide this case based on a sufficient factual record.

14 The Plaintiff Class is comprised of noncitizens who are detained in the Central  
15 District under 8 U.S.C. § 1226(a) while their immigration cases are pending. Class  
16 members have been ordered released on bond by an Immigration and Customs  
17 Enforcement (“ICE”) officer or an immigration judge, yet remain detained—in some  
18 cases, for years—merely because they lack the financial resources to pay the bond.  
19 Defendants' custody review policies or practices fail to consider class members'  
20 ability to pay a bond and the availability of non-monetary conditions of release, in  
21 violation of the Constitution's Due Process, Equal Protection, and Excessive Bail  
22 clauses and 8 U.S.C. § 1226(a). The Class seeks a permanent injunction requiring the  
23 Government to consider ability to pay and alternative conditions of release when  
24 setting terms of release for immigrant detainees during their immigration  
25 proceedings.

26 Plaintiffs served document requests, requests for admission, and  
27 interrogatories on Defendants DHS and DOJ. Plaintiffs' requests seek basic

1 information that is plainly relevant to legal standards applicable to this case. “[D]ue  
2 process requires ‘adequate procedural protections’ to ensure that the government’s  
3 asserted justification for physical confinement ‘outweighs the individual’s  
4 constitutionally protected interest in avoiding physical restraint.’” *Casas-Castrillon*  
5 *v. Dep’t of Homeland Sec.*, 535 F.3d 942, 950 (9th Cir. 2008) (quoting *Zadvydas v.*  
6 *Davis*, 533 U.S. 678, 690 (2001)). To analyze the Class’s claims under this standard,  
7 the Court will examine the Government’s justifications for “confinement,” and the  
8 adequacy of the “procedural protections” that the Government currently provides to  
9 class members, to determine if their constitutionally protected liberty interest entitles  
10 them to greater procedures. *Zadvydas*, 533 U.S. at 690-92. Further, to determine  
11 whether permanent injunctive relief is warranted, the Court must evaluate whether  
12 the Plaintiffs will suffer irreparable harm in the absence of the relief sought, engage  
13 in a balance of equities, and consider the public’s interest.

14 Plaintiffs’ requests seek three sets of information relevant to the parties’  
15 claims and defenses under these governing legal standards. Fed. R. Civ. P. 26(b)(1).  
16 *First*, Plaintiffs seek information about the challenged custody review procedures,  
17 including information concerning Defendants’ policies and practices for custody  
18 determinations and bond hearings, and how the procedures are applied in individual  
19 class members’ cases. In particular, Plaintiffs seek information related to  
20 Defendants’ assertion, made repeatedly in this Court and before the Ninth Circuit,  
21 that immigration officials already consider class members’ ability to pay.

22 *Second*, Plaintiffs seek basic information about class members, including their  
23 names and contact information and information about the harms they have suffered  
24 in detention (such as the length of their incarceration).

25 *Third*, Plaintiffs seek information about the costs of Defendants’ existing  
26 procedures and Plaintiffs’ requested relief, including information related to  
27 Defendants’ assertions that the relief sought will create unmanageable burdens and  
28

“upend[ ]” the immigration system. Emergency Mot. for Stay of Inj. and Proceedings Pending Appeal (“Ninth Circuit Stay Motion”) at 1-2, *Hernandez v. Lynch*, No. 16-56829 (9th Cir. Dec. 30, 2016), ECF No. 5-1.

The Defendants have not met their burden of showing why this limited set of critical information “should not be allowed,” much less “clarifying, explaining, and supporting its objections.” *Sullivan v. Prudential Ins. Co. of Am.*, 233 F.R.D. 573, 575 (C.D. Cal. 2005). Defendants’ position also ignores the governing legal framework. Courts evaluating challenges to detention procedures routinely rely on facts about the application of those procedures, their effects on detainees, and the costs to the Government. *See infra* IV.B.1; XXII.B.1; XXXV.B.1. Consistent with existing case law, this Court relied on extensive factual information—including documents submitted by Defendants—in granting a preliminary injunction. Order Den. Defs.’ Mot. to Dismiss, Granting Pls.’ Mot. for Class Cert., Granting Pls.’ Mot. for Prelim. Inj. at 7-11, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. Nov. 10, 2016), ECF No. 84.

**B. Defendants’ Introductory Statement**

[TO COME FROM DEFENDANTS]

**DISPUTED REQUESTS**

**OBJECTION THAT THERE ARE NO FACTUAL ISSUES IN THIS CASE AND DISCOVERY IS THEREFORE UNWARRANTED**

**I. GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ RFPS TO DHS, AND GENERAL OBJECTION NO. 1 TO PLAINTIFFS’ RFPS TO DOJ:**

Defendants oppose Plaintiffs’ requests for discovery as inappropriate in this case. First, this case presents purely legal questions concerning the constitutionality of 8 U.S.C. § 1226(a). Section 1226(a) provides that consideration of ability to pay and alternatives to detention when assessing flight risk to set an alien’s initial bond is

---

<sup>3</sup> The objections listed here differed only typographically and not materially, and are therefore presented as one here.



1 a discretionary determination; does not require that an alien who is determined to  
2 present a flight risk have an initial bond set below the \$1,500 statutory minimum;  
3 and does not require consideration of alternatives to a full cash bond or alternatives  
4 to detention when setting an initial bond for an alien who is determined to present a  
5 flight risk. Because these questions are purely legal, Plaintiffs have not demonstrated  
6 the required need for the discovery they seek.

7 **A. Plaintiffs' Contentions**

8 1. There Are Plainly Discoverable Facts Relevant to Plaintiffs'  
9 Claims and the Government's Defenses.

10 Defendants' discovery responses repeatedly state that this case "presents  
11 purely legal questions concerning the constitutionality of 8 U.S.C. § 1226(a)" that do  
12 not require discovery to answer.<sup>4</sup> At the Parties' various conferences, Plaintiffs  
13 sought to have Defendants commit to producing any documents or interrogatory  
14 responses, but Defendants summarily refused to produce any information in response  
15 to Plaintiffs' discovery requests based on the above general objection.

16 However, Judge Bernal has already made clear that he believes this case  
17 requires fact discovery.

18 I think I disagree with that position [i.e., that Plaintiffs do  
19 not get discovery because this case involves purely legal  
20 issues] as a general statement, and that's why I imposed a  
21 discovery deadline as part of the scheduling order. So I  
22 think some discovery of some kind should be conducted. I  
23 don't think the case presents a purely legal issue.

---

24 <sup>4</sup> Defendants' statement mischaracterizes the claims at issue in this case.  
25 Plaintiffs are not challenging the constitutionality of any *statute* in this litigation.  
26 Instead, Plaintiffs challenge the adequacy of the *procedures* that Defendants have  
27 adopted to make custody decisions. *See* Pls.- Pets.' Not. of Mot. and Mot. for Class-  
28 Wide Prelim. Inj. and P&A at 2, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK  
(C.D. Cal. May 19, 2016), ECF No. 45 (stating that Plaintiffs seek to "enjoin  
[Defendants'] unlawful policies or practices" of "ignor[ing] an individual's ability to  
pay").



1 Transcript of Oral Argument at 5, *Hernandez v. Sessions*, 5:16-cv-00620-JGB-KK  
2 (October 2, 2017). Consistent with this statement, Judge Bernal’s preliminary  
3 injunction decision—as well as the Ninth Circuit decision upholding it—relied on  
4 extensive facts about the Plaintiffs, Defendants’ policies and practices, and the harms  
5 suffered by Plaintiffs in the absence of the requested relief. Order Den. Defs.’ Mot.  
6 to Dismiss, Granting Pls.’ Mot. for Class Cert., Granting Pls.’ Mot. for Prelim. Inj. at  
7 7-11, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. Nov. 10, 2016,  
8 ECF No. 84 at 7-11; *Hernandez v. Sessions*, No. 16-56829, 2017 WL 4341748, at  
9 \*4-5, \*14-15 (9th Cir. Oct. 2, 2017).

10 Judge Bernal’s position is well grounded in governing case law. Courts  
11 routinely rely on numerous facts when deciding legal questions concerning the  
12 adequacy of procedural safeguards. For example, when resolving due process  
13 challenges to government detention procedures, the Ninth Circuit regularly examines  
14 the facts and circumstances of Defendants’ restrictions on detainees’ liberty,  
15 Defendants’ purported justifications for those restraints, and the procedures  
16 Defendants currently provide. *See Zadvydas*, 533 U.S. at 691-92 (examining, inter  
17 alia, the regulatory purpose for indefinite immigration detention, and the nature of  
18 the deprivation of liberty); *Casas-Castrillon*, 535 F.3d at 952 (remanding due  
19 process challenge to develop a record regarding “the procedural review” the  
20 petitioner received).

21 As a result, the Supreme Court, Ninth Circuit, and district courts routinely rely  
22 on facts when resolving legal questions regarding the sufficiency of procedural  
23 safeguards, including in cases concerning immigration detention. *See Demore v.*  
24 *Kim*, 538 U.S. 510, 518-20, 529-30 (2003) (resolving question whether due process  
25 required bond hearings by relying on aggregate data concerning individual cases);  
26 *Rodriguez v. Robbins*, 804 F.3d 1060, 1085 (9th Cir. 2015) (“*Rodriguez III*”), *cert.*  
27 *granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016) (citing to flaws in  
28

1 existing custody review procedures based on facts developed in discovery); *see also*  
2 *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55, 57 (1991) (relying on information  
3 concerning causes for delays in arraignment and observing that “it takes 36 hours to  
4 process arrested persons in Riverside County” in assessing constitutional  
5 requirements); *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1193-1200 (9th  
6 Cir. 2015) (citing numerous facts to address sufficiency of procedures for notifying  
7 low-income tenants of reduction in rent subsidies); *Vazquez v. Rackauckas*, 734 F.3d  
8 1025, 1041-53 (9th Cir. 2013) (discussing numerous record facts to determine  
9 whether procedures for challenging application of gang injunction were sufficient);  
10 *Morales-Izquierdo v. Gonzalez*, 486 F.3d 484, 496 (9th Cir. 2007) (en banc) (relying  
11 on data concerning the error rate to assess the sufficiency of additional process in  
12 reinstated removal proceedings); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488,  
13 1507-08 (C.D. Cal. 1988) (resolving procedural due process claim by reference to  
14 facts about “a substantial number of class members”).

15 *Rodriguez III* is instructive. There, a certified class of immigration detainees in  
16 the Central District of California challenged the lawfulness of detaining noncitizens  
17 under various immigration statutes for prolonged periods of time on due process and  
18 statutory grounds. During the course of pre-trial proceedings, the parties conducted  
19 substantial discovery on numerous matters. *See* Minute Order in Chambers,  
20 *Rodriguez v. Robbins*, No. CV 07-03239-TJH (RNBx), (C.D. Cal. Apr. 25, 2011),  
21 (“*Rodriguez*”), ECF No. 169 (granting motion to compel government to produce  
22 substantial discovery, including class members’ A-files and documents concerning  
23 government policies and practices); Order at 7, *Rodriguez*, ECF No. 210 (finding that  
24 information concerning class members’ immigration cases “go[es] directly to the due  
25 process inquiry before the Court”). Those topics included: the length that class  
26 members remained in detention (particularly those who continued to pursue claims  
27 for relief from removal), the rates at which class members succeeded in their cases,

1 the class members' ties to their communities and other equities, and the costs of  
2 running alternatives to detention programs. The Ninth Circuit relied heavily on these  
3 facts in affirming summary judgment and the permanent injunction. *See Rodriguez*  
4 *III* (noting that "parties conducted discovery, and class counsel adduced extensive  
5 evidence detailing the circumstances under which class members are detained"); *see*  
6 *also* Joint Report at 10, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK, 2016  
7 (C.D. Cal. July 24, 2017), ECF No. 111 (citing *Rodriguez* discovery orders).

8 Defendants have claimed that the District Court's decision on prudential  
9 exhaustion found that this case turns on purely legal issues that require no discovery.  
10 Defs.' Not. of Mot. and Mot. to Stay Discovery Pending Ninth Cir. Prelim. Inj.  
11 Appeal at 3, 9, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. Aug.  
12 28, 2017), ECF No. 115. But, as noted above, Judge Bernal has made clear that he  
13 made no such finding. The Court ruled—and the Ninth Circuit agreed—that  
14 prudential exhaustion is not required because the BIA's views will not aid this Court  
15 in resolving the constitutional issues before it. *See* Order Den. Defs.' Mot. to  
16 Dismiss, Granting Pls.' Mot. for Class Cert., Granting Pls.' Mot. for Prelim. Inj. at  
17 14-15, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. Nov. 10,  
18 2016), ECF No. 84; Filed Opinion at 21-22, *Hernandez v. Sessions III*, No 16-56829  
19 (9th Cir. Oct. 2, 2017), ECF No. 71-1. As Judge Bernal has now confirmed, that  
20 ruling in no way suggested that there are no facts relevant to those constitutional  
21 issues or that fact discovery should be foreclosed.

22 **B. Defendants' Contentions**

23 [TO COME FROM DEFENDANTS]

24 **II. GENERAL OBJECTION NO. 1 TO PLAINTIFFS'**  
25 **INTERROGATORIES TO DHS AND GENERAL OBJECTION NO. 1**  
**TO PLAINTIFFS' INTERROGATORIES TO DOJ:**

26 Defendants object to all of Plaintiffs' Interrogatories on the ground that  
27 Plaintiffs have failed to provide a satisfactory reason why they need to conduct any  
28

discovery in this case, which presents purely legal questions concerning the constitutionality of 8 U.S.C. § 1226(a). Section 1226(a) provides that consideration of ability to pay and alternatives to detention when setting an alien's initial bond is a discretionary determination; and does not require that an alien who is determined to present a flight risk has an initial bond set below the \$1,500 statutory minimum; and does not require consideration of alternatives to a full cash bond, or alternatives to detention when setting an initial bond for an alien who is determined to present a flight risk.

**A. Plaintiffs' Contentions**

Plaintiffs' position regarding Defendants' general objection that no discovery is warranted because this case presents a purely legal question is addressed *supra* Section I.A.1.

**B. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**GENERAL OBJECTION TO PLAINTIFFS' RELEVANT TIME PERIOD**

**III. GENERAL OBJECTION TO RELEVANT TIME PERIOD IN PLAINTIFFS' RFPS TO DHS; GENERAL OBJECTION TO RELEVANT TIME PERIOD IN PLAINTIFFS' RFPS TO DOJ; OBJECTION NO. 5 TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS REGARDING RELEVANT TIME PERIOD IN PLAINTIFFS' INTERROGATORIES TO DHS; AND OBJECTION NO. 7 TO PLAINTIFFS' DEFINITIONS AND INSTRUCTIONS REGARDING RELEVANT TIME PERIOD IN PLAINTIFFS' INTERROGATORIES TO DOJ<sup>5</sup>:**

Defendants object to Plaintiffs' assertion that the relevant time period for any responsive documents begins January 1, 2012. This request is overbroad and not proportional to the needs of the case. January 1, 2012, is not a relevant date for the subject matter of this litigation, and extends more than four years prior to the date this lawsuit was filed. This case involves claims regarding whether Defendants

<sup>5</sup> The objections listed were titled differently, but were materially identical. They are therefore addressed as one here.

1 current policies and procedures violate Plaintiffs' constitutional rights. Therefore, at  
2 most, the relevant time period began with the filing of this lawsuit on April 6, 2016.  
3 Moreover, identifying additional responsive materials outside of this time period  
4 would require substantial additional costs that are not proportional to the marginal  
5 relevance of those materials to the claims and defenses in this litigation.

6 **A. Plaintiffs' Contentions**

7 1. Plaintiffs' Relevant Time Period Coincides with the Incidents  
8 Giving Rise to the Complaint and is Not Unduly Broad

9 Plaintiffs seek only relevant materials starting from the calendar year when  
10 named Plaintiff Cesar Matias was detained and ending on the date the Plaintiff Class  
11 served its discovery requests. The Government contends that the relevant time period  
12 can start no earlier than the filing of the Complaint, ignoring the years before that  
13 date when the named Plaintiffs were subjected to the challenged policies and  
14 practices. Defendants' contentions are wrong as a matter of law.

15 The Federal Rules of Civil Procedure "provide[ ] that parties may obtain  
16 discovery regarding[ ] any nonprivileged matter that is relevant to any party's claim  
17 or defense and proportional to the needs of the case . . . ." *Rangel v. Chino Valley*  
18 *Unified Sch. Dist.*, 2017 WL 2874468, \*2 (C.D. Cal. July 5, 2017) (quoting Fed. R.  
19 Civ. P. 26(b)(1)) (granting plaintiff's motion to compel discovery from 2012, for  
20 incidents that occurred in December of 2013 and June of 2014, because such  
21 documents may still have been relevant to plaintiff's claims). While "courts typically  
22 limit discovery to a 'reasonable time' from the alleged" acts forming the basis of the  
23 parties' claims, courts need not restrict discovery to the dates of the liability period,  
24 or even to the date of the filing of the complaint. *See, e.g., Razo v. Timec Co.*, 2016  
25 WL 1623938, at \*2 (N.D. Cal. Apr. 21, 2016) (limiting discovery requests to two  
26 years prior to the relevant incident); *Jessop v. City of Fresno*, 2016 WL 4161087, at  
27 \*6-7 (E.D. Cal. Aug. 4, 2016) (explaining that information from months preceding  
28

1 relevant incidents are also discoverable when access to that information can help  
2 provide relevant factual information); *Garedakis v. Brentwood Union Sch. Dist.*,  
3 2016 WL 1133715, at \*3 (N.D. Cal. Mar. 23, 2016) (permitting discovery into a  
4 period two years prior to liability period in order to provide context to alleged harm  
5 caused during liability period); *see also United States v. City of Torrance*, 164  
6 F.R.D. 493, 495-96 (C.D. Cal. 1995) (explaining how discovery of documents  
7 created post-filing may still be appropriate as such documents “may relate to events  
8 occurring prior to the filing of the complaint.”) (citation and internal quotation marks  
9 omitted).

10 Plaintiffs’ proposed time period effectively tracks the period of the alleged  
11 acts that form the basis of this case. Defendants detained named Plaintiff Cesar  
12 Matias on March 29, 2012. Accordingly, Plaintiffs seek discovery starting January 1,  
13 2012, a few months before his detention and initial bond proceedings. Subsequent to  
14 those proceedings, Mr. Matias remained detained for *over four* years, during which  
15 he was continuously subjected to Defendants’ policies and practices regarding bond,  
16 including having his financial circumstances ignored. He also suffered the harms of  
17 Defendants’ policies and practices throughout that period, including his struggle to  
18 collect the necessary documents to defend himself against deportation. Plaintiffs’  
19 requested discovery period is therefore well in-line with discovery periods set  
20 frequently by other courts. *See, e.g., Rangel*, 2017 WL 2874468, at \*2; *Razo*, 2016  
21 WL 1623938, at \*2; *Garedakis*, 2016 WL 1133715, at \*3; *see also* Section IV.B.1  
22 *infra* (discussing relevance of bond hearings for former class members).

23 To the extent that the Government believes that production of records for the  
24 proposed time period will be unduly burdensome, this concern can be addressed by  
25 sampling. On multiple occasions during the parties’ meet and confers, Plaintiffs have  
26 proposed sampling records from the proposed time period, but the Government has  
27 refused, maintaining its position that all the requested information is irrelevant.





1 any of the factors needed to establish the propriety of a permanent injunction. See  
2 Fed. R. Evid. 401 (defining “relevance”).

3 Additionally, the A-files of individual aliens are not relevant to the claims and  
4 defenses in this case because Plaintiffs allegedly challenge the policies and practices  
5 of Defendants, rather than the individual bond determinations made for each  
6 Plaintiff. Thus, A-files are not “of consequence in determining” Plaintiffs’ claims. *Id.*

7 Defendants also object to the extent that Plaintiffs seek information protected  
8 from disclosure under the Privacy Act, 5 U.S.C. § 552a; DHS policy regarding the  
9 application of the Privacy Act to “visitors and aliens”; and other statutes, regulations,  
10 or directives regarding the protection of privacy, confidential information, or medical  
11 information, or under regulations preventing disclosure of specific alien information  
12 (such as, but not limited to: 8 U.S.C. §§ 1160(b)(5),(6), 1186a(c)(4), 1202(f),  
13 1254a(c)(6); 1255a(c)(4),(5); 1304(b); and 1367(a)(2),(b),(c),(d); 22 U.S.C. §  
14 7105(c)(1)(C); 8 C.F.R. §§ 208.6; 210.2(e), 214.11(e); 214.14(e); 216.5(e)(3)(iii);  
15 236.6; 244.16; 245a.2(t); 245a.3(n); 245a.21; 1003.46; and 1208.6), many of which  
16 would subject Defendants to civil or criminal penalties or other sanctions in the event  
17 of unauthorized disclosure.

18 Defendants further object to RFP No. 1 because it is unduly burdensome and  
19 disproportionate to the needs of the case. The compilation of the information sought  
20 would require significant manual, case-by-case processing and coordination with  
21 multiple government agencies. Defendants cannot easily identify class members by  
22 using an automated search of DHS databases because the issuance of bond  
23 determinations and whether an individual is detained under 8 U.S.C. § 1226(a) are  
24 not readily captured in any relevant DHS database. The records for any subset of  
25 individuals that might be identified would have to be individually examined to  
26 determine whether an individual is or is not a class member. Moreover, identifying  
27 individuals who were class members at any point since November 10, 2016, requires  
28



1 the merging of one-time snapshots of data taken during the time period that must be  
2 combined manually. The ever shifting detention population as individuals are  
3 detained and released make this complicated and burdensome. Finally, each  
4 individual A-file would then be required to be located, requested, digitized, and  
5 reviewed. There are likely thousands of Plaintiffs and former Plaintiffs that have  
6 been detained since November 10, 2016. The requested information will need to be  
7 processed manually at great cost and with significant workforce resources.

8 Therefore, the burden and expense of the proposed discovery outweighs its  
9 likely benefit because this matter presents a constitutional challenge to Defendants'  
10 policies and practices, and the parties do not contest the relevant facts regarding  
11 those policies and practices. In particular, the parties agree that immigration officials  
12 and immigration judges are not required under current policy to engage in a free-  
13 standing inquiry and consider a non-citizen's financial circumstances in every single  
14 case, even where the non-citizen has not put his or her financial circumstances at  
15 issue, and that immigration officials and immigration judges are free to consider  
16 "ability to pay" when they, in their discretion, deem it relevant.

17 **DEFENDANTS' RESPONSE TO RFP NO. 1 TO DHS:**

18 Pursuant to the above objections, no documents will be produced in response  
19 to this request.

20 **B. Plaintiffs' Contentions**

- 21 1. Information Regarding Current and Former Immigrant Detainees  
22 Who Are or Were Held on Bond is Not Just Relevant, but Central  
to Plaintiffs' Claims and the Government's Defenses.

23 Defendants argue that information about individual class members is  
24 irrelevant. Defendants' arguments misunderstand the nature of Plaintiffs' claims, and  
25 are irreconcilable with their own prior positions in this case.

26 Plaintiffs have sought a limited set of documents and database records related  
27 to class members. Specifically, Plaintiffs have sought the following information:

- 1 • *Class members' A-files.* A-files are administrative files maintained by  
2 DHS that contain the Government's records related to a noncitizen's  
3 immigration case and detention, including records related to custody  
4 determinations. These documents often contain a variety of biographical  
5 information, including immigration status, family ties, residence history,  
6 work history, criminal history and other information.
- 7 • *Information about class members in databases maintained by DHS and*  
8 *DOJ.* The databases contain information about the length of  
9 noncitizens' detention, custody determinations, bond amounts, non-  
10 monetary conditions of release, the merits of their immigration case, and  
11 contact information.
- 12 • *Class members' Risk Calculation Assessments.* ICE employs Risk  
13 Calculation Assessments, a computer algorithm that relies on individual  
14 detainee information, as a tool to determine whether to release detainees  
15 and under what conditions.
- 16 • *Documents concerning class members' custody determinations and*  
17 *bond hearings, to the extent they are not already maintained in the A-*  
18 *file.* This information is intended to capture any miscellaneous  
19 information that Defendants use to make custody determinations for  
20 members of the Class.

21 The requested documents and database information about class members are  
22 plainly relevant for at least three reasons.

23 ***First,*** this information provides evidence as to how Defendants' challenged  
24 procedures operate in practice. For example, class members' A-files may contain  
25 bond decisions and briefs that reflect whether the class member's ability to pay was  
26 considered at a bond hearing. Likewise, database records will document the outcome  
27 of bond hearings, including the bond amount set in a case, as well as how long class  
28

1 members were detained on a bond they were unable to post. The A-file documents,  
2 records of proceeding, and database records are the only readily available sources for  
3 such information. Without the requested information, the Court will have no  
4 opportunity to evaluate how the challenged procedures are applied in individual  
5 cases.

6 Courts routinely rely on such evidence when resolving questions regarding the  
7 legal or constitutional sufficiency of procedural safeguards, including in cases  
8 concerning immigration detention. *See Demore*, 538 U.S. at 518-20, 529-30  
9 (resolving question whether due process required bond hearings by relying on  
10 aggregate data concerning individual cases); *Rodriguez III*, 804 F.3d at 1079, 1081,  
11 1085 (considering class members' individual experiences under challenged detention  
12 procedures based on facts drawn from A-files); *see also Cty. of Riverside*, 500 U.S.  
13 at 55, 57 (relying on information concerning causes for delays in arraignment and  
14 observing that "it takes 36 hours to process arrested persons in Riverside County" in  
15 assessing constitutional requirements). For example, the Ninth Circuit's decision in  
16 *Rodriguez III* relied on numerous facts concerning the class members, including their  
17 lengths of detention; their ties to this country and claims for relief from removal;  
18 their levels of education; and the effects of detention on themselves and their  
19 families. 804 F.3d at 1072-73, 1085. Consistent with this authority, this Court relied  
20 on facts concerning the class members in its decision granting a preliminary  
21 injunction and denying Defendants' motion to dismiss. *See* Order Den. Defs.' Mot.  
22 to Dismiss, Granting Pls.' Mot. for Class Cert., Granting Pls.' Mot. for Prelim. Inj. at  
23 7-11, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. Nov. 10, 2016),  
24 ECF No. 84.

25 The Government itself has recognized that "Plaintiffs' Certified Record of  
26 Proceedings" is "potentially relevant" because "the parties—and the Court—can  
27 evaluate the process afforded to each Plaintiff when their initial bonds were set."

1 Joint Report at 7, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal.  
2 July 24, 2017), ECF No. 111. This concession is fatal to their arguments. This is a  
3 class action: much as the named Plaintiffs’ records are relevant to evaluating the  
4 procedures at issue, so too are the records of other unnamed Plaintiffs.

5 **Second**, the requested documents and database information provide evidence  
6 as to the harm that class members suffer and why the relief they seek is in the public  
7 interest—information that the Court must evaluate in determining whether to grant  
8 permanent injunctive relief. *See, e.g., Facebook, Inc. v. Power Ventures, Inc.*, 2017  
9 WL 1650608, \*5 (N.D. Cal. May 2, 2017) (“A party seeking a permanent injunction  
10 must [show] . . . that the public interest would not be disserved by a permanent  
11 injunction.”). Plaintiffs’ requests seek information to establish the degree of  
12 deprivation they will suffer without obtaining adequate hearings including, for  
13 example, the length of time class members are typically detained; whether they were  
14 separated from U.S. citizen children; and whether they were able to successfully  
15 litigate their cases while detained. As other litigation has shown, the class members’  
16 records reveal numerous important facts concerning the class, which are critical to  
17 assessing the deprivation they suffer. *See Rodriguez III*, 804 F.3d at 1081-82  
18 (discussing record facts concerning class members, including detention lengths and  
19 rates at which they won removal cases).

20 **Third**, Plaintiffs’ counsel are entitled to such information because the class  
21 members are their clients. *See Fed. R. Civ. P. 23(g)(4); Staton v. Boeing Co.*, 327  
22 F.3d 938, 959-60 (9th Cir. 2003) (referring to absent class members as “class  
23 counsel’s clients”). Plaintiffs need to investigate the class members’ claims and  
24 protect their interests, and Defendants are in a far better position to compile and  
25 provide the information necessary to do so. *Cf. Artis v. Deere & Co.*, 276 F.R.D.  
26 348, 353 (N.D. Cal. 2011) (permitting discovery because “putative class members  
27 may possess relevant discoverable information concerning issues dealing with  
28

1 Plaintiff's gender discrimination claims" and any privacy concerns could be  
2 mitigated via protective order).

3 Defendants advance several arguments as to why the requested information is  
4 irrelevant, but none withstand scrutiny. **First**, Defendants claim that information  
5 about former class members (*i.e.*, individuals who have been released or whose  
6 detention authority has changed from 8 U.S.C. § 1226(a) to another provision) is not  
7 relevant to Plaintiffs' claims for current class members. *See, e.g.*, Objections to DHS  
8 RFP 1. This makes no sense. Information about how Defendants' procedures were  
9 applied to detainees who have been released is no less relevant than information  
10 about detainees who remain incarcerated. In both cases, the information would shed  
11 light on how the challenged procedures operate in practice and the harms that  
12 Defendants' existing detention regime causes to detainees. Indeed, Defendants have  
13 recognized that information about the Named Plaintiffs—both of whom have been  
14 released like "former" class members—is relevant because it will allow the Court to  
15 "evaluate the process afforded each Plaintiff." Joint Report at 7, *Hernandez v.*  
16 *Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. July 24, 2017), ECF No. 111.

17 **Second**, Defendants claim that facts about individual class members are not  
18 relevant because "Plaintiffs allegedly challenge the policies and practices of  
19 Defendants, rather than the individual bond determinations made for each Plaintiff."  
20 *See, e.g.*, Objections to DHS RFP 1. But, as set forth above, the Court can only  
21 evaluate the legal sufficiency of Defendants' "policies and practices" on the basis of  
22 how they operate in practice. This is not a facial challenge to Defendants'  
23 procedures; it is an as-applied challenge to how the procedures are applied to class  
24 members. While Plaintiffs do not seek to challenge the individual bond amounts set  
25 in their cases, their claims will require the Court to evaluate how Defendants' class-  
26 wide "policies and practices" are applied in custody determinations and bond  
27 hearings in individual cases.

28

1        **Third**, Defendants claim that information about the merits of Plaintiffs’  
2 immigration cases is not relevant because bond hearings are conducted separate and  
3 apart from removal proceedings. *See* Objections to DOJ RFP 1 (citing 8 C.F.R. §  
4 1003.19(d)). But Plaintiffs do not seek such information because it is considered in  
5 bond hearings. Rather, Plaintiffs seek merits information that demonstrate that the  
6 class members’ detention is not reasonable, and to document the harms that the  
7 Plaintiff class suffers in detention. For example, this information may reveal that  
8 class members who are detained are less likely to prevail on their immigration cases  
9 and be deported than similarly situated detainees who were released on bond. Courts  
10 have recognized that the effects of detention, including on noncitizens’ ability to  
11 litigate their cases in detention, is relevant to a due process challenge to detention  
12 procedures. *See Rodriguez III*, 804 F.3d at 1081-82.

13        Pursuant to LR 37-2.1, Plaintiffs state that, at the parties’ various conferences,  
14 Plaintiffs maintained that at least some information regarding the class members was  
15 relevant, but Defendants refused to produce any information based on their general  
16 objection that discovery is not appropriate in this case.

17                2.        Defendants Cannot Withhold Information Based on Hypothetical  
18                                Assertions of Privilege and Confidentiality.

19        Defendants object to Plaintiffs’ requests on the ground that they seek  
20 information that is “likely” subject to certain privileges or “to the extent that  
21 Plaintiffs seek information protected from disclosure under the Privacy Act,” DHS  
22 policy, “and other statutes, regulations, or directives regarding the protection of  
23 privacy, confidential information, or medical information, or under regulations  
24 preventing disclosure of specific alien information . . . such as, but not limited to”  
25 twenty-five identified statutory and regulatory provisions. Critically, Defendants do  
26 not assert that these privileges or confidential provisions *in fact* apply, only that they  
27 *may* apply to some unidentified portions of the requested information. Defendants’  
28



1 hypothetical and unsupported invocations of privilege and confidentiality cannot  
2 justify their refusal to produce the requested information.

3 Federal Rule of Civil Procedure 26(b)(5)(A) requires that “[w]hen a party  
4 withholds information otherwise discoverable by claiming that the information is  
5 privileged . . . the party must: (i) expressly make the claim; and (ii) describe the  
6 nature of the documents, communications, or tangible things not produced or  
7 disclosed—and do so in a manner that, without revealing information itself  
8 privileged or protected, will enable other parties to assess the claim.” A “blanket  
9 claim of privilege is simply not sufficient,” and “objections should be plain enough  
10 and specific enough so that the court can understand in what way the [discovery  
11 requests] are alleged to be objectionable.” *Davis v. Fendler*, 650 F.2d 1154, 1160  
12 (9th Cir. 1981). “[B]oilerplate objections or blanket refusals inserted into a response  
13 to a [] request for production of documents are insufficient to assert a privilege.”  
14 *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. Of Mont.*, 408 F.3d 1142,  
15 1149 (9th Cir. 2005).

16 Defendants’ objections utterly fail to meet these requirements. Defendants do  
17 not identify whether any given privilege or confidentiality provision applies to the  
18 requested information, or describe the nature of the material claimed to be privileged  
19 or confidential. Indeed, it appears that Defendants have not even reviewed the  
20 requested documents to determine whether they in fact contain privileged or  
21 confidential material. Defendants’ objections should be rejected on this basis alone.

22 Moreover, Defendants fail to explain why their concerns about the production  
23 of alleged confidential information cannot be addressed by a suitably tailored  
24 protective order. The parties have commenced negotiations on a protective order, and  
25 exchanged drafts. The draft protective order provides stringent provisions to protect  
26 sensitive information, and expressly authorizes the production of information subject  
27 to the Privacy Act. *See* 5 U.S.C. 552a(b)(11) (permitting disclosure of information  
28

1 subject to the Privacy Act “pursuant to the order of a court of competent  
2 jurisdiction”). Courts have found that several of the confidentiality provisions  
3 invoked by Defendants do not bar civil discovery and that a protective order is  
4 sufficient to protect information subject to those provisions. *See Zambrano v. I.N.S.*,  
5 972 F.2d 1122, 1125 (9th Cir. 1992), *overruled on other grounds in I.N.S. v.*  
6 *Zambrano*, 509 U.S. 918 (1993); Order, *Rodriguez* (C.D. Cal. May 3, 2012), ECF  
7 No. 210.

8 Accordingly, if Defendants determine that requested information is subject to  
9 confidentiality provisions, they can seek to produce the information subject to the  
10 rigorous terms of the parties’ negotiated protective order. But in all events,  
11 Defendants’ invocation of privilege and confidentiality cannot justify their refusal to  
12 produce any responsive information.

13 Pursuant to LR 37-2.1, Plaintiffs state that, at the parties’ various conferences,  
14 Plaintiffs asserted that Defendants could not refuse to produce any information based  
15 on claims of hypothetical privilege or confidentiality, and must conduct an  
16 investigation and log any documents withheld, but Defendants maintained that they  
17 would not produce any information based on their general objection that discovery is  
18 not appropriate in this case.

19 3. The Government’s Vague Assertions of Burden Do Not Justify  
20 Refusing to Produce the Requested Documents.

21 The Government has also refused to produce the information requested above,  
22 even where Plaintiffs have requested only a sampling from the relevant time period,  
23 because doing so purportedly “require[s] significant manual, case-by-case processing  
24 and coordination with multiple government agencies.” This objection, which does no  
25 more than describe a typical civil litigant’s obligation to participate in discovery, is  
26 patently insufficient. As the party objecting to discovery, the Government must  
27  
28



1 justify its decision to withhold this highly relevant information to which only it has  
2 access. The Government has not and cannot do so.

3 On a motion to compel, the Court only needs to limit the scope of a discovery  
4 request if:

5 (i) the discovery sought is unreasonably cumulative or  
6 duplicative, or can be obtained from some other source that  
is more convenient, less burdensome, or less expensive;

7 (ii) the party seeking discovery has had ample opportunity  
8 to obtain the information by discovery in the action; or

9 (iii) the proposed discovery is outside the scope permitted  
by Rule 26(b)(1).

10 Fed. R. Civ. P. 26(b)(2)(C). In addition, to overcome a motion to compel the  
11 production of electronically stored information, a party “must show that the  
12 information *is not reasonably accessible* because of undue burden or cost.” *Lindell*  
13 *v. Synthes USA*, 2013 WL 3146806, at \*6 (E.D. Cal. June 18, 2013) (emphasis  
14 added) (citing Fed. R. Civ. P. 26(b)(2)(B)).

15 “The party who resists discovery has the burden to show that discovery should  
16 not be allowed, and has the burden of clarifying, explaining, and supporting its  
17 objections.” *Polaris Innovations Ltd. v. Kingston Tech. Co.*, 2017 WL 3275615, at  
18 \*2 (C.D. Cal. Feb. 14, 2017) (quoting *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458  
19 (C.D. Cal. 2002)). “General or boilerplate objections such as ‘overly burdensome  
20 and harassing’ are improper—especially when a party fails to submit any evidentiary  
21 declarations supporting such objections.” *Id.* (internal alterations omitted) (quoting  
22 *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D. Cal. 2006)). The  
23 Government’s boilerplate burden objections do not satisfy any of the tests above and  
24 the Court should compel it to produce the requested information.

25 **First**, the Government raises a threshold issue that it cannot “easily identify  
26 class members”—and therefore their records—because “whether an individual is  
27 detained under 8 U.S.C. § 1226(a)” is not captured in relevant databases and  
28

1 therefore will require manual file review. The Government has failed to provide any  
2 evidentiary support for its objection, which plainly lacks merit. The Government has  
3 *already* identified individuals who qualify as class members, and produced their  
4 records, without incident. On December 15, 2015, in response to a FOIA request  
5 submitted by Plaintiffs’ counsel, the Government produced detention data limited to  
6 individuals detained under Section 1226(a) in the Central District of California. (*See*  
7 Decl. of Michael Tan, *Hernandez v. Sessions III*, No. 5:16-00620 (C.D. Cal. Apr. 22,  
8 2016), ECF No. 24-1; Ex. B, the “ICE FOIA Response”). By producing this  
9 information, the Government has demonstrated that it is entirely capable of  
10 identifying and producing records for class members. Moreover, the preliminary  
11 injunction order requires the Government to provide new bond hearings, with the  
12 required procedures, to class members. Yet in the ten months since the order was  
13 entered, the Government has never claimed that it is unable to comply because it  
14 cannot identify class members.

15       The reality is that—even if the Government’s databases do not separately track  
16 the statutory detention authority—the Government can “easily identify” class  
17 members using satisfactory proxies for detention authority and class membership.  
18 The Government has admitted as much. In a letter concerning Defendants’  
19 objections, the Government stated that Defendant DHS has proposed using  
20 “mandatory detention” as a proxy for distinguishing between class members and  
21 non-class members. Defendants’ September 25, 2017 Letter at 9. The Government  
22 has provided no reason why Defendant DOJ could not use the same proxy to produce  
23 information maintained in DOJ databases. In addition, Defendants have additional  
24 proxies to identify class members. For example, the immigration charges that  
25 determine whether a respondent is subject to 8 U.S.C. § 1226(a) are recorded in the  
26 EOIR database and can be used to identify individuals released pursuant to 8 U.S.C.  
27 § 1226(a); indeed, the Government relies on analysis based on these charges on its  
28

1 website. *See* Executive Office for Immigration Review (Aug., 2016), available at  
2 [https://www.justice.gov/sites/default/files/pages/attachments/2016/08/25/criminal-](https://www.justice.gov/sites/default/files/pages/attachments/2016/08/25/criminal-charge-completion-statistics-201608.pdf)  
3 [charge-completion-statistics-201608.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2016/08/25/criminal-charge-completion-statistics-201608.pdf).

4 *Second*, the Government's burden objections to the production of documents  
5 concerning class members, including A-files, are overstated. Defendants fail to  
6 acknowledge that Plaintiffs have repeatedly offered to negotiate a sample of A-files  
7 to minimize any burdens on the Government. A reasonably sized sample would be  
8 equivalent to what DHS routinely produces *every few days* in response to individual  
9 requests for A-files. Indeed, a subdivision of DHS, the National Records Center,  
10 produced 4,000 to 6,000 A-files per month in 2005 in individual immigration cases  
11 in response to FOIA requests from individual immigrants. *See* Recommendations  
12 from the CIS Ombudsman to the Director USCIS (July 12, 2006), *available at*  
13 [http://www.dhs.gov/xlibrary/assets/CISOmbudsman\\_RR\\_30\\_FOIA\\_Processing\\_07-](http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_30_FOIA_Processing_07-12-06.pdf)  
14 [12-06.pdf](http://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_30_FOIA_Processing_07-12-06.pdf). In 2012, USCIS processed 600 A-file requests per day. *See*  
15 <https://foia.blogs.archives.gov/2012/06/07/ensuring-requests-for-a-files-are-a-ok/>.  
16 That number is almost certainly larger today, given that the number of deportation  
17 cases has substantially increased in the last few years.

18 Defendants have not identified anything distinctive about Plaintiffs' discovery  
19 requests that will require more or different review than what the Government  
20 ordinarily conducts under FOIA. A-files produced in response to FOIA requests  
21 undergo review for confidential and privileged information, much as Defendants  
22 claim they need to do here. *See generally* 5 U.S.C. § 552(b) (exempting certain  
23 categories of information from disclosure under FOIA). Moreover, "[t]he  
24 government uses the A-file routinely in almost every case to determine whether an  
25 alien should be removed and whether an alien should be naturalized, and *maintains*  
26 *an automated system to make access easy for its staff.*" *Dent v. Holder*, 627 F.3d  
27 365, 373 (9th Cir. 2010) (citing U.S. Gov't Accountability Office, GAO-07-85,  
28

1 Immigration Benefits: Additional Efforts Needed to Help Ensure Alien Files are  
2 Located when Needed 1 (2006)) (emphasis added).

3         Given the Government's routine production of thousands of A-files, Plaintiffs'  
4 request for a limited sample of A-files and other documents can hardly be considered  
5 unduly burdensome. Even if the production requires some expenditure of resources,  
6 "[t]he fact that production of documents will be time consuming and expensive is not  
7 ordinarily a sufficient reason to refuse to produce material if the requested material is  
8 relevant and necessary to the discovery of admissible evidence." *Shaw v. Experian*  
9 *Info. Sols., Inc.*, 306 F.R.D. 293, 301 (S.D. Cal. 2015).

10         Accordingly, Defendants have failed to establish any legitimate reason to limit  
11 the scope of Plaintiffs' requests. The requested information is not duplicative, is in  
12 the Government's exclusive possession, and cannot reasonably be obtained from any  
13 other source. Even if Plaintiffs were able to identify class members without the  
14 Government's records, interviewing those class members individually to inquire as  
15 to the contents of their A-files and other documents is unreasonably burdensome  
16 compared to having the Government produce those files, particularly since the class  
17 members are in detention. The Court should therefore reject the Government's  
18 meritless burden arguments and compel the Government to produce the requested  
19 information.

20                 4.     Plaintiffs' Position on Remaining Objections.

21         Plaintiffs' position regarding Defendants' contention that no discovery should  
22 take place in this case is addressed *supra* Section I.A.1.

23                 C.     Defendants' Contentions

24                 [TO COME FROM DEFENDANTS]

25     V.     RFP NO. 2 TO DHS:

26                 All electronic DATABASE records CONCERNING IMMIGRATION  
27 DETAINEES held at any time during the Relevant Time Period under 8 U.S.C. §

1 1226(a), including but not limited to electronic database records CONCERNING  
2 their detention, CUSTODY DETERMINATIONS, CUSTODY  
3 REDETERMINATION HEARINGS, IMMIGRATION BONDS, ALTERNATIVE  
4 CONDITIONS OF RELEASE, removal proceedings, removal, and appearance for  
5 removal proceedings and removal.

6 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 2 TO DHS:**

7 Defendants object to RFP No. 2 as inappropriate in this case, which presents  
8 purely legal questions. Because this case presents legal issues, disposition on  
9 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
10 would benefit from discovery. Further, any decisions concerning discovery and its  
11 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
12 likely to provide substantial guidance in resolving (or eliminating) discovery and  
13 jurisdictional issues.

14 Further, subject to objections that apply to all RFPs and objections to any  
15 applicable definitions above, Defendants object to RFP No. 2 in that it seeks  
16 information regarding "removal proceedings, removal, and appearance for . . .  
17 removal" as overbroad because it seeks information not relevant to the claims and  
18 defenses in this case. This information is not "of consequence in determining"  
19 Plaintiffs' claims that Defendants have violated the constitutional rights of the class  
20 members by not requiring that ability to pay be considered in setting a bond, by  
21 requiring a cash bond, and/or by not considering failure to post bond as a changed  
22 circumstance or any of the factors needed to establish the propriety of a permanent  
23 injunction. *See* Fed. R. Evid. 401 (defining "relevance"). Moreover, custody and  
24 bond proceedings are separate proceedings from removal proceedings. *See* 8 C.F.R.  
25 § 1003.19(d) ("Consideration by the Immigration Judge of an application or request  
26 of a respondent regarding custody or bond under this section shall be separate and  
27 apart from, and shall form no part of, any deportation or removal hearing or  
28

1 proceeding.”); *see also Joseph v. Holder*, 600 F.3d 1235, 124042 (9th Cir. 2010).  
2 The evidence offered in a custody proceeding is maintained in a separate record of  
3 proceeding from removal proceedings, and the adjudicator is limited to considering  
4 only that evidence which is introduced in the custody proceeding when determining  
5 eligibility for release. As such, the information contained in the removal proceeding  
6 is not relevant to the claims and defenses in this case.

7 Additionally, the database records of individual aliens are not relevant to the  
8 claims and defenses in this case because Plaintiffs allegedly challenge the policies  
9 and practices of Defendants, rather than the individual bond determinations made for  
10 each Plaintiff. Thus, individual records are not “of consequence in determining”  
11 Plaintiffs’ claims. *Id.*

12 Defendants also object to the extent that Plaintiffs seek information protected  
13 from disclosure under the Privacy Act, 5 U.S.C. § 552a; DHS policy regarding the  
14 application of the Privacy Act to “visitors and aliens”; and other statutes, regulations,  
15 or directives regarding the protection of privacy, confidential information, or medical  
16 information, or under regulations preventing disclosure of specific alien information  
17 (such as, but not limited to: 8 U.S.C. §§ 1160(b)(5),(6); 1186a(c)(4); 1202(f);  
18 1254a(c)(6); 1255a(c)(4),(5); 1304(b); and 1367(a)(2),(b),(c),(d); 22 U.S.C. §  
19 7105(c)(1)(C); 8 C.F.R. §§ 208.6; 210.2(e); 214.11(e); 214.14(e); 216.5(e)(3)(iii);  
20 236.6; 244.16; 245a.2(t); 245a.3(n); 245a.21; 1003.46; and 1208.6), many of which  
21 would subject Defendants to civil or criminal penalties or other sanctions in the event  
22 of unauthorized disclosure.

23 Defendants also object to RFP No. 2 in that it seeks any responsive documents  
24 beginning in January 1, 2012. This case involves claims regarding whether  
25 Defendants current policies and procedures violate Plaintiffs constitutional rights.  
26 Therefore, at most, the relevant time period began with the filing of this lawsuit on  
27 April 6, 2016.



1 Defendants also object to RFP No. 2 because it is unduly burdensome and  
2 disproportionate to the needs of the case. The records sought require significant  
3 processing to compile the requested information. DHS databases do not organize the  
4 requested information as defined in RFP No. 2. Moreover, information regarding the  
5 “detention” authority under which an alien is held or whether an alien is subject to  
6 “alternative conditions of release” under 8 U.S.C. § 1226(a) are not captured in the  
7 relevant databases. In order to compile the requested information, Defendants must  
8 first generate a list of all requested individuals, which is a labor and time-intensive  
9 process. The records for any subset of individuals that might be identified would  
10 have to be individually examined to determine whether an individual is or is not  
11 detained under 8 U.S.C. § 1226(a). Additionally, identifying individuals who were  
12 detained under 8 U.S.C. § 1226(a) at any point since a particular date requires the  
13 merging of one-time snapshots of data taken during the time period that must be  
14 combined manually. The ever shifting detention population as individuals are  
15 detained and released make this complicated and burdensome. Furthermore,  
16 information related to these multiple categories are contained in various databases  
17 and will have to be manually combined to respond to the RFP, without any guarantee  
18 of complete accuracy.

19 Therefore, the requested information will need to be processed manually,  
20 likely at great cost and with significant workforce resources. As discussed above, the  
21 burden and expense of the proposed discovery outweighs its likely benefit because  
22 this matter presents a constitutional challenge to Defendants’ policies and practices,  
23 and the parties do not contest the relevant facts regarding those policies and  
24 practices. In particular, the parties agree that immigration officials and immigration  
25 judges are not required under current policy to engage in a freestanding inquiry and  
26 consider a non-citizen’s financial circumstances in every single case, even where the  
27 non-citizen has not put his or her financial circumstances at issue, and that

1 immigration officials and immigration judges are free to consider “ability to pay”  
2 when they, in their discretion, deem it relevant.

3 **DEFENDANTS’ RESPONSE TO RFP NO. 2 TO DHS:**

4 Pursuant to the above objections, no documents will be produced in response  
5 to this request.

6 **B. Plaintiffs’ Contentions**

7 1. Plaintiffs’ request seeks information about class members maintained in  
8 DHS databases. This information includes a range of plainly relevant information,  
9 including class members’ names and contact information, information concerning  
10 their custody determinations (including the amount of bond set), the length of time  
11 that they have been detained, and the outcome of their immigration cases. For the  
12 reasons set forth in Section IV.B.1, this information is relevant because it will  
13 illustrate how Defendants’ policies and procedures are applied in individual class  
14 members cases and the harms that class members suffer in detention.

15 Defendants object that their databases “do not organize the requested  
16 information as defined in” Plaintiffs’ requests or do not “capture” the requested  
17 information. This makes no sense. Plaintiffs’ requests seek “all” database records  
18 concerning class members maintained by Defendants DHS and DOJ. Plaintiffs’  
19 requests include an illustrative list of the type of database information that they seek,  
20 but—to the extent that this information is not “captured” or “organized” by  
21 Defendants—Defendants need not produce that specific information. However,  
22 Defendants’ objection provides no basis for refusing to produce *any* database  
23 information, including information that is “captured” by Defendants. In any event,  
24 “[t]he fact that Defendants do not segregate the data in the precise manner it is  
25 requested and would be required to manually review some of the data entries does  
26 not make Plaintiff’s requests inaccessible ‘because of undue burden or cost.’”  
27 *Lindell*, 2013 WL 3146806, at \*7.



2. Plaintiffs' position regarding Defendants' contention that no discovery should take place in this case is addressed *supra* Section I.A.1.

3. Plaintiffs' position regarding Defendants' contention that the requested information regarding current and former class members is not relevant is addressed *supra* Section IV.B.1.

4. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

5. Plaintiffs' position regarding the Relevant Time Period is addressed *supra* Section III.A.1.

6. Plaintiffs' position regarding Defendants' vague and unsubstantiated assertion of undue burden against producing information regarding class members is addressed *supra* Section IV.B.2.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**VI. RFP NO. 3 TO DHS:**

All LOOKUP TABLES or other DOCUMENTS indicating the definition of each DATABASE field maintained in any electronic DATABASE that contain records for any PLAINTIFF; the possible entries for each DATABASE field; the definition of each possible entry for the DATABASE field; and the name of the DATABASE.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 3 TO DHS:**

Defendants object to RFP No. 3 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is

1 likely to provide substantial guidance in resolving (or eliminating) discovery and  
2 jurisdictional issues.

3 Further, subject to objections that apply to all RFPs and objections to any  
4 applicable definitions above, Defendants object to RFP No. 3 as overbroad because it  
5 seeks information not relevant to the claims and defenses in this case. “All lookup  
6 tables” regarding “each database field” in “any electronic database” do not contain  
7 substantial information that is “of consequence in determining” Plaintiffs’ claims  
8 that Defendants have violated the constitutional rights of the class members by not  
9 requiring that ability to pay be considered in setting a bond, by requiring a cash  
10 bond, and/or by not considering failure to post bond as a changed circumstance or  
11 any of the factors needed to establish the propriety of a permanent injunction. *See*  
12 Fed. R. Evid. 401 (defining “relevance”). Some of the databases maintained by DHS  
13 contain information not relevant to the claims and defenses in this case.

14 Defendants additionally object on the ground that Plaintiffs’ request for all  
15 database dictionaries as well as their potential entries is overbroad because many if  
16 not most of the fields are not relevant to the claims and defenses in this case.

17 Defendants also object to RFP No. 3 in that it seeks information that likely is  
18 protected under the deliberative process privilege, the law-enforcement sensitive  
19 protection, the law-enforcement privilege, and/or other government privileges.

20 Defendants also object to RFP No. 3 because it is unduly burdensome and  
21 disproportionate to the needs of the case. The information sought requires significant  
22 processing to compile and will need to be processed manually, likely at great cost  
23 and with significant workforce resources. The burden and expense of the proposed  
24 discovery outweighs its likely benefit because this matter presents a constitutional  
25 challenge to Defendants’ policies and practices, and the parties do not contest the  
26 relevant facts regarding those policies and practices. In particular, the parties agree  
27 that immigration officials and immigration judges are not required under current  
28

1 policy to engage in a free-standing inquiry and consider a non-citizen's financial  
2 circumstances in every single case, even where the non-citizen has not put his or her  
3 financial circumstances at issue, and that immigration officials and immigration  
4 judges are free to consider "ability to pay" when they, in their discretion, deem it  
5 relevant. Thus, information regarding the lookup tables regarding databases  
6 containing information regarding Plaintiffs are not relevant in determining whether  
7 the Constitution requires consideration of "ability to pay" in every case.

8 **DEFENDANTS' RESPONSE TO RFP NO. 3 TO DHS:**

9 Pursuant to the above objections, no documents will be produced in response  
10 to this request.

11 **B. Plaintiffs' Contentions**

12 1. Plaintiffs' request seeks the "look up" tables and other documents that  
13 explain the content and operation of the databases from which Plaintiffs seek  
14 information in DHS RFP No. 2. This information is necessary to enable Plaintiffs to  
15 understand the scope and meaning of database information that is produced, and is  
16 therefore plainly relevant to the parties' claims and defenses in this case. Defendants'  
17 objections to producing this information have been previously addressed by  
18 Plaintiffs:

19 2. Plaintiffs' position regarding Defendants' contention that no discovery  
20 should take place in this case is addressed *supra* Section I.A.1.

21 3. Plaintiffs' position regarding Defendants' contention that the requested  
22 information regarding current and former class members is not relevant is addressed  
23 *supra* Section IV.B.1.

24 4. Plaintiffs' position regarding Defendants' withholding of information  
25 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
26 Section IV.B.2.

1           5. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
2 assertion of undue burden against producing information regarding class members is  
3 addressed *supra* Section IV.B.2.

4           **C. Defendants' Contentions**

5           [TO COME FROM DEFENDANTS]

6           **VII. RFP NO. 9 TO DHS:**

7           All ICE Risk Classification Assessments for every PLAINTIFF or former  
8 PLAINTIFF who was or is a member of the certified class at any time between  
9 November 10, 2016 and the date of DEFENDANT'S response to this request, as well  
10 as for Plaintiffs Xochitl Hernandez and Cesar Matias.

11           **A. DEFENDANTS' OBJECTIONS TO RFP NO. 9 TO DHS:**

12           Defendants object to RFP No. 9 as inappropriate in this case, which presents  
13 purely legal questions. Because this case presents legal issues, disposition on  
14 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
15 would benefit from discovery. Further, any decisions concerning discovery and its  
16 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
17 likely to provide substantial guidance in resolving (or eliminating) discovery and  
18 jurisdictional issues.

19           Further, subject to objections that apply to all RFPs and objections to any  
20 applicable definitions above, Defendants object to RFP No. 9 in that it seeks  
21 information that likely is protected the under attorney-client privilege, the attorney-  
22 work product protection, the deliberative process privilege, the law-enforcement  
23 sensitive protection, the law-enforcement privilege, and/or other government  
24 privileges.

25           Defendants also object to the extent that Plaintiffs seek information protected  
26 from disclosure under the Privacy Act, 5 U.S.C. § 552a; DHS policy regarding the  
27 application of the Privacy Act to "visitors and aliens"; and other statutes, regulations,  
28

1 or directives regarding the protection of privacy, confidential information, or medical  
2 information, or under regulations preventing disclosure of specific alien information  
3 (such as, but not limited to: 8 U.S.C. §§ 1160(b)(5),(6); 1186a(c)(4); 1202(f);  
4 1254a(c)(6); 1255a(c)(4),(5); 1304(b); and 1367(a)(2),(b),(c),(d); 22 U.S.C. §  
5 7105(c)(1)(C); 8 C.F.R. §§ 208.6; 210.2(e); 214.11(e); 214.14(e); 216.5(e)(3)(iii);  
6 236.6; 244.16; 245a.2(t); 245a.3(n); 245a.21; 1003.46; and 1208.6), many of which  
7 would subject Defendants to civil or criminal penalties or other sanctions in the event  
8 of unauthorized disclosure.

9 Defendants also object to RFP No. 9 as overbroad because it seeks  
10 information not relevant to the claims and defenses in this case. Risk Assessment  
11 Classifications of former Plaintiffs, i.e., individuals who have posted bond and been  
12 released from immigration custody, who were otherwise released from or exited  
13 immigration custody, and whose detention authority has changed from 8 U.S.C. §  
14 1226(a) to another provision, are no longer “of consequence in determining”  
15 Plaintiffs’ claims that Defendants have violated the constitutional rights of the class  
16 members by not requiring that ability to pay be considered in setting a bond, by  
17 requiring a cash bond, and/or by not considering failure to post bond as a changed  
18 circumstance or any of the factors needed to establish the propriety of a permanent  
19 injunction. *See* Fed. R. Evid. 401 (defining “relevance”).

20 Additionally, the Risk Classification Assessments of individual aliens,  
21 whether former or current Plaintiffs, are not relevant to the claims and defenses in  
22 this case because Plaintiffs allegedly challenge the policies and practices of  
23 Defendants, rather than the individual bond determinations made for each Plaintiff.  
24 Thus, the Risk Classification Assessments are not “of consequence in determining”  
25 Plaintiffs’ claims. *Id.*

26 Defendants further object to RFP No. 9 because it is unduly burdensome and  
27 disproportionate to the needs of the case. The information sought requires significant  
28

1 manual, case-by-case processing. Defendants cannot easily identify class members  
2 by using an automated search of DHS databases because the issuance of bonds and  
3 actual detention under 8 U.S.C. § 1226(a) is not readily captured in the relevant  
4 databases. Once each class member is identified, each individual Risk Classification  
5 Assessment would be required to be located and analyzed. The requested  
6 information will need to be processed manually at great cost and with a significant  
7 workforce resources.

8 Therefore, the burden and expense of the proposed discovery outweighs its  
9 likely benefit because this matter presents a constitutional challenge to Defendants'  
10 policies and practices, and the parties do not contest the relevant facts regarding  
11 those policies and practices. In particular, the parties agree that immigration officials  
12 and immigration judges are not required under current policy to engage in a free-  
13 standing inquiry and consider a non-citizen's financial circumstances in every single  
14 case, even where the non-citizen has not put his or her financial circumstances at  
15 issue, and that immigration officials and immigration judges are free to consider  
16 "ability to pay" when they, in their discretion, deem it relevant.

17 **DEFENDANTS' RESPONSE TO RFP NO. 9 TO DHS:**

18 Pursuant to the above objections, no documents will be produced in response  
19 to this request.

20 **B. Plaintiffs' Contentions**

21 1. Plaintiffs' request seeks documents concerning the Risk Classification  
22 Assessments (RCAs) for class members. "ICE uses the RCA tool to help make its  
23 detention decisions. Through RCA, ICE inputs database records and interview  
24 information into a 'scoring system' that produces public safety and flight risk  
25 assessments--low/medium/high for each--and then recommends detention or release,  
26 with the capability to make attendant custody or supervision classifications." Mark  
27 Noferi, Robert Koulish, The Immigration Detention Risk Assessment, 29 Geo.

1 Immigr. L.J. 45, 48 (2014). Information about how ICE employs the RCA to make  
2 custody determinations for class members is plainly relevant to the parties' claims  
3 and defenses in this case. Defendants' objections to producing this information have  
4 been previously addressed by Plaintiffs:

5       2. Plaintiffs' position regarding Defendants' contention that no discovery  
6 should take place in this case is addressed *supra* Section I.A.1.

7       3. Plaintiffs' position regarding Defendants' withholding of information  
8 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
9 Section IV.B.2.

10       4. Plaintiffs' position regarding Defendants' contention that the requested  
11 information regarding current and former class members is not relevant is addressed  
12 *supra* Section IV.B.1.

13       5. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
14 assertion of undue burden against producing information regarding class members is  
15 addressed *supra* Section IV.B.2.

16       **C. Defendants' Contentions**

17       [TO COME FROM DEFENDANTS]

18       **VIII. RFP NO. 10 TO DHS:**

19       All DOCUMENTS and COMMUNICATIONS CONCERNING  
20 DEFENDANT'S policies, procedures, practices, forms, and trainings about the ICE  
21 Risk Classification Assessment tool—including, but not limited to whether ICE  
22 accepts or overrides the recommendation made by the tool—in the Central District of  
23 California.

24       **A. DEFENDANTS' OBJECTIONS TO RFP NO. 10 TO DHS:**

25       Defendants object to RFP No. 10 as inappropriate in this case, which presents  
26 purely legal questions. Further, any decisions concerning discovery and its scope  
27 should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to  
28



1 provide substantial guidance in resolving (or eliminating) discovery and  
2 jurisdictional issues.

3 Further, subject to objections that apply to all RFPs and objections to any  
4 applicable definitions above, Defendants object to RFP No. 10 in that it seeks  
5 information that likely is protected under the attorney-client privilege, the attorney-  
6 work product protection, the deliberative process privilege, and/or law-enforcement  
7 sensitive protection.

8 Defendants also object to RFP No. 10 because it is vague. It is unclear what  
9 types of documents Plaintiffs are seeking in their request.

10 Defendants also object to RFP No. 10 as overbroad because it seeks  
11 information not relevant to the claims and defenses in this case. Any document or  
12 communication regarding Defendants' historical policies, procedures, practices,  
13 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
14 Defendants' current policies and practices have violated the constitutional rights of  
15 the class members by not requiring that ability to pay be considered in setting a  
16 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
17 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

18 Defendants also object to RFP No. 10 because it seeks information which is  
19 not relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
20 information that likely resides with a large number of individuals that are involved  
21 with policies, procedures, practices, forms, and trainings. It would take significant  
22 resources to collect, inspect, and produce any responsive information.

23 Therefore, the burden and expense of the proposed discovery outweighs its  
24 likely benefit because this matter presents a constitutional challenge to Defendants'  
25 policies and practices, and the parties do not contest the relevant facts regarding  
26 those policies and practices. In particular, the parties agree that immigration officials  
27 and immigration judges are not required under current policy to engage in a free-

28

1 standing inquiry and consider a non-citizen's financial circumstances in every single  
2 case, even where the non-citizen has not put his or her financial circumstances at  
3 issue, and that immigration officials and immigration judges are free to consider  
4 "ability to pay" when they, in their discretion, deem it relevant. Thus, information  
5 regarding Defendants' policies, procedures, practices, forms, and trainings regarding  
6 Risk Classification Assessments are not relevant in determining whether the  
7 Constitution requires consideration of "ability to pay" in every case.

8 **DEFENDANTS' RESPONSE TO RFP NO. 10 TO DHS:**

9 Pursuant to the above objections, no documents will be produced in response  
10 to this request.

11 **B. Plaintiffs' Contentions**

12 1. Plaintiffs' position regarding Defendants' contention that no discovery  
13 should take place in this case is addressed *supra* Section I.A.1.

14 2. Plaintiffs' position regarding Defendants' withholding of information  
15 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
16 Section IV.B.2.

17 3. Defendants have withdrawn their objection regarding vagueness.

18 4. Plaintiffs' position that information regarding Defendants' policies,  
19 procedures and general practices regarding custody determinations and other  
20 contexts where a person's ability to pay is considered are relevant to the parties'  
21 claims and defenses is addressed *supra* Section XXII.B.1.

22 5. Defendants have agreed to meet and confer with Plaintiffs regarding  
23 potential custodians and search terms for locating information responsive to this  
24 request, but only if the Court compels Defendants to engage in discovery.

25 **C. Defendants' Contentions**

26 [TO COME FROM DEFENDANTS]

27 **IX. RFP NO. 1 TO DOJ:**

1 All electronic DATABASE records CONCERNING IMMIGRATION  
2 DETAINEES held under 8 U.S.C. § 1226(a) at any time during the Relevant Time  
3 Period, including but not limited to electronic database records CONCERNING their  
4 detention, CUSTODY DETERMINATIONS, CUSTODY REDETERMINATION  
5 HEARINGS, IMMIGRATION BONDS, ALTERNATIVE CONDITIONS OF  
6 RELEASE, representation by counsel, removal proceedings, custody and merits  
7 appeals to the Board of Immigration Appeals, removal, and appearance for removal  
8 proceedings and removal.

9 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 1 TO DOJ:**

10 Defendants object to RFP No. 1 as inappropriate in this case, which presents  
11 purely legal questions. Because this case presents legal issues, disposition on  
12 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
13 would benefit from discovery. Further, any decisions concerning discovery and its  
14 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
15 likely to provide substantial guidance in resolving (or eliminating) discovery and  
16 jurisdictional issues.

17 Further, subject to objections that apply to all RFPs and objections to any  
18 applicable definitions above, Defendants object to RFP No. 1 in that it seeks  
19 information regarding "representation by counsel, removal proceedings, . . . merits  
20 appeals to Board of Immigration Appeals, removal, and appearance for . . . removal"  
21 as overbroad because it seeks information not relevant to the claims and defenses in  
22 this case. This information is not "of consequence in determining" Plaintiffs' claims  
23 that Defendants have violated the constitutional rights of the class members by not  
24 requiring that ability to pay be considered in setting a bond, by requiring a cash  
25 bond, and/or by not considering failure to post bond as a changed circumstance or  
26 any of the factors needed to establish the propriety of a permanent injunction. *See*  
27 Fed. R. Evid. 401 (defining "relevance"). Moreover, custody and bond proceedings  
28

1 are separate proceedings from removal proceedings. *See* 8 C.F.R. § 1003.19(d)  
2 (“Consideration by the Immigration Judge of an application or request of a  
3 respondent regarding custody or bond under this section shall be separate and apart  
4 from, and shall form no part of, any deportation or removal hearing or proceeding.”);  
5 *see also Joseph v. Holder*, 600 F.3d 1235, 1240- 42 (9th Cir. 2010). The evidence  
6 offered in a custody proceeding is maintained in a separate record of proceeding  
7 from removal proceedings, and the adjudicator is limited to considering only that  
8 evidence which is introduced in the custody proceeding when determining eligibility  
9 for release. As such, the information contained in the removal proceeding is not  
10 relevant to the claims and defenses in this case.

11 Additionally, the database records of individual aliens are not relevant to the  
12 claims and defenses in this case because Plaintiffs allegedly challenge the policies  
13 and practices of Defendants, rather than the individual bond determinations made or  
14 each Plaintiff. Thus, individual records are not “of consequence in determining”  
15 Plaintiffs’ claims. *Id.*

16 Defendants also object to the extent that Plaintiffs seek information protected  
17 from disclosure under the Privacy Act, 5 U.S.C. § 552a; and other statutes,  
18 regulations, or directives regarding the protection of privacy, confidential  
19 information, or medical information, or under regulations preventing disclosure of  
20 specific alien information (such as, but not limited to: 8 U.S.C. §§ 1160(b)(5),(6);  
21 1186a(c)(4); 1202(f); 1254a(c)(6); 1255a(c)(4),(5); 1304(b); and  
22 1367(a)(2),(b),(c),(d); 22 U.S.C. § 7105(c)(1)(C); 8 C.F.R. §§ 208.6; 210.2(e);  
23 214.11(e); 214.14(e); 216.5(e)(3)(iii); 236.6; 244.16; 245a.2(t); 245a.3(n); 245a.21;  
24 1003.46; and 1208.6), many of which would subject Defendants to civil or criminal  
25 penalties or other sanctions in the event of unauthorized disclosure.

26 Defendants also object to RFP No. 1 in that it seeks any responsive documents  
27 beginning in January 1, 2012. This case involves claims regarding whether  
28

1 Defendants current policies and procedures violate Plaintiffs constitutional rights.  
2 Therefore, at most, the relevant time period began with the filing of this lawsuit on  
3 April 6, 2016.

4 Defendants further object to RFP No. 1 because it is unduly burdensome and  
5 disproportionate to the needs of the case. The records sought requires significant  
6 manual, case-by-case processing because the requested information is not readily  
7 identifiable given the capabilities of the EOIR database. In order to compile the  
8 requested information, Defendants must first retrieve from its database a list of all  
9 those who have been detained, whether under 8 U.S.C. § 1226(a) or otherwise. The  
10 EOIR database does not specifically track individuals by which detention authority  
11 they are detained under, so a simple query containing the variables in Plaintiffs’  
12 request would not suffice. To provide a list of only those detained under 8 U.S.C. §  
13 1226(a), Defendant would need to embark on a time and labor intensive review of  
14 the paper record for each respondent on the detainee list originally retrieved. There  
15 are likely thousands of immigration detainees that have been detained pursuant to 8  
16 U.S.C. § 1226(a) since January 1, 2012.

17 Therefore, the requested information will need to be processed manually,  
18 likely at great cost and with significant workforce resources. As discussed above, the  
19 burden and expense of the proposed discovery outweighs its likely benefit because  
20 this matter presents a constitutional challenge to Defendants’ policies and practices,  
21 and the parties do not contest the relevant facts regarding those policies and  
22 practices. In particular, the parties agree that immigration officials and immigration  
23 judges are not required under current policy to engage in a freestanding inquiry and  
24 consider a non-citizen’s financial circumstances in every single case, even where the  
25 non-citizen has not put his or her financial circumstances at issue, and that  
26 immigration officials and immigration judges are free to consider “ability to pay”  
27 when they, in their discretion, deem it relevant.

1 **DEFENDANTS' RESPONSE TO RFP NO. 1 TO DOJ:**

2 Pursuant to the above objections, no documents will be produced in response  
3 to this request.

4 **B. Plaintiffs' Contentions**

5 1. Plaintiffs' request seeks information about class members maintained in  
6 DOJ databases. This information includes a range of plainly relevant information,  
7 including class members' names and contact information, information concerning  
8 their custody determinations (including the amount of bond set), the length of time  
9 that they have been detained, and the outcome of their immigration cases. For the  
10 reasons set forth in Section IV.B.1, this information is relevant because it will  
11 illustrate how Defendants' policies and procedures are applied in individual class  
12 members cases and the harms that class members suffer in detention. Defendants'  
13 objections to producing this information have been previously addressed by  
14 Plaintiffs:

15 2. Plaintiffs' position regarding Defendants' contention that no discovery  
16 should take place in this case is addressed *supra* Section I.A.1.

17 3. Plaintiffs' position regarding Defendants' contention that the requested  
18 information regarding current and former class members is not relevant is addressed  
19 *supra* Section IV.B.1.

20 4. Plaintiffs' position regarding Defendants' withholding of information  
21 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
22 Section IV.B.2.

23 5. Plaintiffs' position regarding the Relevant Time Period is addressed  
24 *supra* Section III.A.1.

25 6. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
26 assertion of undue burden against producing information regarding class members is  
27 addressed *supra* Section IV.B.2.

28

1           **C. Defendants' Contentions**

2           [TO COME FROM DEFENDANTS]

3       **X. RFP NO. 2 TO DOJ:**

4           All LOOKUP TABLES or other DOCUMENTS indicating the definition of  
5 each DATABASE field maintained in any electronic DATABASE that contain  
6 records for any PLAINTIFF; the possible entries for each DATABASE field; the  
7 definition of each possible entry for the DATABASE field; and the name of the  
8 DATABASE.

9           **A. DEFENDANTS' OBJECTIONS TO RFP NO. 2 TO DOJ:**

10          Defendants object to RFP No. 2 as inappropriate in this case, which presents  
11 purely legal questions. Because this case presents legal issues, disposition on  
12 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
13 would benefit from discovery. Further, any decisions concerning discovery and its  
14 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
15 likely to provide substantial guidance in resolving (or eliminating) discovery and  
16 jurisdictional issues.

17          Further, subject to objections that apply to all RFPs and objections to any  
18 applicable definitions above, Defendants object to RFP No. 2 as overbroad because it  
19 seeks information that Plaintiffs have not established is relevant to the claims and  
20 defenses in this case. "All lookup tables" regarding "each database field" in "any  
21 electronic database" do not contain substantial information that is "of consequence in  
22 determining" Plaintiffs' claims that Defendants have violated the constitutional  
23 rights of the class members by not requiring that ability to pay be considered in  
24 setting a bond, by requiring a cash bond, and/or by not considering failure to post  
25 bond as a changed circumstance or any of the factors needed to establish the  
26 propriety of a permanent injunction. *See* Fed. R. Evid. 401 (defining "relevance").  
27  
28



1 Defendants additionally object on the ground that Plaintiffs' request for all  
2 database dictionaries as well as their potential entries is overbroad because many, if  
3 not most, of the fields are not relevant to the claims and defenses in this case.

4 Defendants also object to RFP No. 2 in that it seeks information that is likely  
5 protected under the deliberative process privilege, the law-enforcement sensitive  
6 protection, the law-enforcement privilege, and/or other government privileges.

7 Defendants also object to RFP No. 2 because it is unduly burdensome and  
8 disproportionate to the needs of the case. The information sought requires significant  
9 processing to compile and will need to be processed manually, likely at great cost  
10 and with significant workforce resources. The burden and expense of the proposed  
11 discovery outweighs its likely benefit because this matter presents a constitutional  
12 challenge to Defendants' policies and practices, and the parties do not contest the  
13 relevant facts regarding those policies and practices. In particular, the parties agree  
14 that immigration officials and immigration judges are not required under current  
15 policy to engage in a free-standing inquiry and consider a non-citizen's financial  
16 circumstances in every single case, even where the non-citizen has not put his or her  
17 financial circumstances at issue, and that immigration officials and immigration  
18 judges are free to consider "ability to pay" when they, in their discretion, deem it  
19 relevant. Thus, information regarding the lookup tables and databases containing  
20 information regarding Plaintiffs are not relevant in determining whether the  
21 Constitution requires consideration of "ability to pay" in every case.

22 **DEFENDANTS' RESPONSE TO RFP NO. 2 TO DOJ:**

23 Pursuant to the above objections, no documents will be produced in response  
24 to this request.

25 **B. Plaintiffs' Contentions**

26 1. Plaintiffs' request seeks the "look up" tables and other documents that  
27 explain the content and operation of the databases from which Plaintiffs seek  
28

1 information in DOJ RFP No. 1. This information is necessary to enable Plaintiffs to  
2 understand the scope and meaning of database information that is produced, and is  
3 therefore plainly relevant to the parties' claims and defenses in this case. Defendants'  
4 objections to producing this information have been previously addressed by  
5 Plaintiffs:

6 2. Plaintiffs' position regarding Defendants' contention that no discovery  
7 should take place in this case is addressed *supra* Section I.A.1.

8 3. Plaintiffs' position regarding Defendants' contention that the requested  
9 information regarding current and former class members is not relevant is addressed  
10 *supra* Section IV.B.1.

11 4. Plaintiffs' position regarding Defendants' withholding of information  
12 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
13 Section IV.B.2.

14 5. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
15 assertion of undue burden against producing information regarding class members is  
16 addressed *supra* Section IV.B.2.

17 **C. Defendants' Contentions**

18 [TO COME FROM DEFENDANTS]

19 **XI. RFP NO. 5 TO DOJ:**

20 All DOCUMENTS and COMMUNICATIONS CONCERNING CUSTODY  
21 REDETERMINATION HEARINGS for any PLAINTIFF [sic] or former  
22 PLAINTIFF who had a bond set under 8 U.S.C. § 1226(a) at any time from  
23 November 10, 2016 to the date of production, including but not limited to any orders  
24 at those hearings; bond memoranda; the record of proceedings; and hearing  
25 recordings.

26 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 5 TO DOJ:**

27

28

1 Defendants object to RFP No. 5 as inappropriate in this case, which presents  
2 purely legal questions. Because this case presents legal issues, disposition on  
3 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
4 would benefit from discovery. Further, any decisions concerning discovery and its  
5 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
6 likely to provide substantial guidance in resolving (or eliminating) discovery and  
7 jurisdictional issues.

8 Further, subject to objections that apply to all RFPs and objections to any  
9 applicable definitions above, Defendants object to RFP No. 5 in that it seeks  
10 information that likely is protected under the attorney-client privilege, the attorney-  
11 work product protection, the deliberative process privilege, the law-enforcement  
12 sensitive protection, the law-enforcement privilege, and/or other government  
13 privileges.

14 Defendants object that RFP No. 5 is vague because the term "former  
15 Plaintiffs" is undefined, and it is thus unclear the extent of the information Plaintiffs  
16 seek to obtain. Defendants also object because it is unclear what types of documents  
17 Plaintiffs are seeking in their request.

18 Defendants also object to RFP No. 5 as overbroad because it seeks  
19 information not relevant to the claims and defenses in this case. Documents and  
20 communications concerning custody redeterminations for former Plaintiffs, to the  
21 extent this group includes individuals who have posted bond and been released from  
22 immigration custody, who were otherwise released from or exited immigration  
23 custody, or whose detention authority has changed from 8 U.S.C. § 1226(a) to  
24 another provision, are no longer "of consequence in determining" Plaintiffs' claims  
25 that Defendants have violated the constitutional rights of the class members by not  
26 requiring that ability to pay be considered in setting a bond, by requiring a cash  
27 bond, and/or by not considering failure to post bond as a changed circumstance or

1 any of the factors needed to establish the propriety of a permanent injunction. *See*  
2 Fed. R. Evid. 401 (defining “relevance”).

3       Additionally, the records of individual aliens are not relevant to the claims and  
4 defenses in this case because Plaintiffs allegedly challenge the policies and practices  
5 of Defendants, rather than the individual bond determinations made for each  
6 Plaintiff. Thus, individual records are not “of consequence in determining”  
7 Plaintiffs’ claims. *Id.*

8       Defendants also object to the extent that Plaintiffs seek information protected  
9 from disclosure under the Privacy Act, 5 U.S.C. § 552a; and other statutes,  
10 regulations, or directives regarding the protection of privacy, confidential  
11 information, or medical information, or under regulations preventing disclosure of  
12 specific alien information (such as, but not limited to: 8 U.S.C. §§ 1160(b)(5),(6);  
13 1186a(c)(4); 1202(f); 1254a(c)(6); 1255a(c)(4),(5); 1304(b); and  
14 1367(a)(2),(b),(c),(d); 22 U.S.C. § 7105(c)(1)(C); 8 C.F.R. §§ 208.6; 210.2(e);  
15 214.11(e); 214.14(e); 216.5(e)(3)(iii); 236.6; 244.16; 245a.2(t); 245a.3(n); 245a.21;  
16 1003.46; and 1208.6), many of which would subject Defendants to civil or criminal  
17 penalties or other sanctions in the event of unauthorized disclosure.

18       Defendants further object to RFP No. 5 because it is unduly burdensome and  
19 disproportionate to the needs of the case. The data sought requires significant  
20 manual, case-by-case review to locate, extract, and process the requested  
21 information. Plaintiffs request documents and communications concerning “any  
22 PLAINTIFF [sic] or former PLAINTIFF who had a bond set under 8 U.S.C. §  
23 1226(a) at any time from November 10, 2016 to the date of production.” This  
24 requested information is not readily identifiable given the capabilities of the EOIR  
25 database. In order to compile the requested information, Defendants must first  
26 retrieve from its database a list of all those who have been detained, whether under 8  
27 U.S.C. § 1226(a) or otherwise. The EOIR database does not specifically track

1 individuals by which detention authority they are detained under, so a simple query  
2 containing the variables in Plaintiffs' request would not suffice. To provide a list of  
3 only those detained under 8 U.S.C. § 1226(a), Defendant would need to embark on a  
4 time and labor intensive review of the paper record for each respondent on the  
5 detainee list originally retrieved. Once the requested list of individuals is deduced, it  
6 then would require case-by-case processing to extract the requested information and  
7 then review and produce it. There are likely thousands of immigration detainees that  
8 have been detained pursuant to 8 U.S.C. § 1226(a) who would constitute current and  
9 former Plaintiffs. Even limiting the request to those filed regarding current Plaintiffs,  
10 there are hundreds of individual files to review.

11 Therefore, the requested information will need to be processed manually,  
12 likely at great cost and with significant workforce resources. As discussed above, the  
13 burden and expense of the proposed discovery outweighs its likely benefit because  
14 this matter presents a constitutional challenge to Defendants' policies and practices,  
15 and the parties do not contest the relevant facts regarding those policies and  
16 practices. In particular, the parties agree that immigration officials and immigration  
17 judges are not required under current policy to engage in a freestanding inquiry and  
18 consider a non-citizen's financial circumstances in every single case, even where the  
19 non-citizen has not put his or her financial circumstances at issue, and that  
20 immigration officials and immigration judges are free to consider "ability to pay"  
21 when they, in their discretion, deem it relevant.

22 **DEFENDANTS' RESPONSE TO RFP NO. 5 TO DOJ:**

23 Pursuant to the above objections, no documents will be produced in response  
24 to this request.

25 **B. Plaintiffs' Contentions**

26 1. Plaintiffs' position regarding Defendants' contention that no discovery  
27 should take place in this case is addressed *supra* Section I.A.1.

28

2. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

3. Defendants have withdrawn their objection regarding vagueness.

4. Plaintiffs' position regarding Defendants' contention that the requested information regarding current and former class members is not relevant is addressed *supra* Section IV.B.1.

5. Plaintiffs' position regarding the Relevant Time Period is addressed *supra* Section III.A.1.

6. Plaintiffs' position regarding Defendants' vague and unsubstantiated assertion of undue burden against producing information regarding class members is addressed *supra* Section IV.B.2.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XII. INTERROGATORY NO. 1 TO DHS:**

Identify all PLAINTIFFS and former PLAINTIFFS who were or are members of the certified class at any time between November 10, 2016 and the date of DEFENDANT'S response to this request, including the PLAINTIFF's name, alien number, detention facility in the Central District of California, date of initial detention, dates of any CUSTODY DETERMINATIONS, the outcomes of any CUSTODY DETERMINATIONS (including any bond amount set and any other conditions of release), date of and reason for release, if any, immigration attorney or attorneys, if any, and address and phone number of immigration attorney or attorneys.

**A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 1 TO DHS:**

1 Defendants object to Interrogatory No. 1 as premature, compound, unduly  
2 burdensome, vague, overbroad as to scope and time, not relevant to any party's claim  
3 or defense, and disproportionate to the needs of the case considering the negligible  
4 potential importance of the discovery in resolving the issues, and whether the burden  
5 or expense of the proposed discovery outweighs its likely benefit. Because this case  
6 presents legal questions, disposition on summary judgment is appropriate.

7 Defendants object to Interrogatory No. 1 as vague because the term "former  
8 Plaintiffs" is undefined, and it is thus unclear the extent of the information Plaintiffs  
9 seek to obtain.

10 Moreover, to the extent "former Plaintiffs" include individuals who are no  
11 longer detained, Defendants object to Interrogatory No. 1 as overly broad and not  
12 relevant. This information is not "of consequence in determining" Plaintiffs' claims  
13 that Defendants have violated the constitutional rights of the class members by not  
14 requiring that ability to pay be considered in setting a bond, by requiring a cash  
15 bond, and/or by not considering failure to post bond as a changed circumstance or  
16 any of the factors needed to establish the propriety of a permanent injunction. *See*  
17 Fed. R. Evid. 401 (defining "relevance").

18 Defendants object to Interrogatory No. 1 as premature because this case  
19 presents purely legal questions concerning the constitutionality of 8 U.S.C. §  
20 1226(a). Section 1226(a) provides that consideration of ability to pay and  
21 alternatives to detention when setting an alien's initial bond is a discretionary  
22 determination. Section 1226(a) does not require that DHS set an initial bond below  
23 the \$1,500 statutory minimum for an alien who presents a flight risk. Moreover,  
24 section 1226(a) does not require that DHS consider alternatives to a full cash bond,  
25 or alternatives to detention when setting an initial bond for an alien who presents a  
26 flight risk. Because these questions are purely legal, Plaintiffs have not demonstrated  
27



1 the required need for the discovery they seek. *See Am. States Ins. Co. v. Hubbard*,  
2 2017 U.S. Dist. LEXIS 112790 (C.D. Cal. Feb. 14, 2017).

3 Defendants further object to Interrogatory No. 1 as premature because the  
4 Ninth Circuit has exercised jurisdiction to review the constitutional and jurisdictional  
5 claims at issue, submitted this case for a decision after argument on July 11, 2017,  
6 and has not yet issued a decision. It is therefore premature to proceed with discovery  
7 as to this interrogatory, which is intertwined with the merits of the preliminary  
8 injunction order that is currently before the Ninth Circuit. Any decisions concerning  
9 discovery and its scope should be stayed pending the Ninth Circuit's forthcoming  
10 decision regarding the preliminary injunction appeal in this case, which is likely to  
11 provide substantial guidance to this Court and the parties in resolving (or  
12 eliminating) discovery and jurisdictional issues, while simultaneously conserving  
13 judicial resources.

14 Defendants further object to Interrogatory No. 1 as overbroad to the extent  
15 Plaintiffs seek personal, private information of individuals that is protected from  
16 disclosure by the Privacy Act, 5 U.S.C. § 552a *et seq.*, concerning aliens who were  
17 represented by counsel when their initial bonds were set.

18 Defendants further object that the six subparts of Interrogatory No. 1  
19 constitute six separate and discrete interrogatories.

20 Defendants further object to Interrogatory No. 1 as overbroad and  
21 disproportionate to the needs of this case, to the extent that it seeks information  
22 related to aliens who have posted bond and been released from immigration custody,  
23 who were otherwise released from or exited immigration custody, and whose  
24 detention authority has changed from 8 U.S.C. § 1226(a) to another provision.

25 Additionally, the records of individual aliens are not relevant to the claims and  
26 defenses in this case because Plaintiffs allegedly challenge the policies and practices  
27 of Defendants, rather than the individual bond determinations made for each  
28

1 Plaintiff. Thus, individual records are not “of consequence in determining”  
2 Plaintiffs’ claims. *Id.*

3 Defendants further object to Interrogatory No. 1 as unduly burdensome and  
4 disproportionate to the needs of the case. Defendants have not identified individual  
5 Plaintiffs and former Plaintiffs, as the information is not readily available given the  
6 manner in which DHS databases are configured. The compilation of the information  
7 sought would require significant manual, case-by-case processing. Defendants  
8 cannot easily identify class members by using an automated search of DHS  
9 databases because the issuance of bond determinations and whether an individual is  
10 detained under 8 U.S.C. § 1226(a) are not readily captured in any relevant DHS  
11 database. The records for any subset of individuals that might be identified would  
12 have to be individually examined to determine whether an individual is or is not a  
13 class member. Moreover, identifying individuals who were class members at any  
14 point since November 10, 2016, requires the merging of one-time snapshots of data  
15 taken during the time period that must be combined manually. The ever shifting  
16 detention population as individuals are detained and released make this complicated  
17 and burdensome.

18 There are likely thousands of Plaintiffs and former Plaintiffs that have been  
19 detained since November 10, 2016.

20 Therefore, the requested information will need to be processed manually,  
21 likely at great cost, due to the broad time period of this request, with a significant  
22 workforce effort, and would be an undue burden on Defendants that outweighs any  
23 benefit likely to be garnered by Plaintiffs. As discussed above, the burden and  
24 expense of the proposed discovery outweighs its likely benefit because this matter  
25 presents a constitutional challenge to Defendants’ policies and practices, and the  
26 parties do not contest the relevant facts regarding those policies and practices. In  
27 particular, the parties agree that immigration officials and immigration judges are not  
28

1 required under current policy to engage in a free-standing inquiry and consider a  
2 non-citizen's financial circumstances in every single case, even where the non-  
3 citizen has not put his or her financial circumstances at issue, and that immigration  
4 officials and immigration judges are free to consider "ability to pay" when they, in  
5 their discretion, deem it relevant.

6 **B. Plaintiffs' Contentions**

7 1. Plaintiffs' position regarding Defendants' contention that no discovery  
8 should take place in this case is addressed *supra* Section I.A.1.

9 2. Defendants have withdrawn their objection regarding vagueness.

10 3. Plaintiffs' position regarding Defendants' contention that the requested  
11 information regarding current and former class members is not relevant is addressed  
12 *supra* Section IV.B.1.

13 4. Plaintiffs' position regarding Defendants' withholding of information  
14 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
15 Section IV.B.2.

16 5. Defendants withdrew their objection regarding subparts.

17 6. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
18 assertion of undue burden against producing information regarding class members is  
19 addressed *supra* Section IV.B.2.

20 **C. Defendants' Contentions**

21 [TO COME FROM DEFENDANTS]

22 **XIII. INTERROGATORY NO. 2 TO DHS:**

23 Identify the steps through which DEFENDANT identified PLAINTIFFS and  
24 former PLAINTIFFS and their information, as requested in Interrogatory No. 1,  
25 above.

26 **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 2 TO**  
27 **DHS:**

1 Defendants object to this interrogatory as premature, vague, overbroad and  
2 ambiguous with respect to its request to identify “the steps through which  
3 DEFENDANTS identified PLAINTIFFS.” The term “steps” is undefined, and it is  
4 thus unclear what information Plaintiffs seek to obtain.

5 Defendants object to Interrogatory No. 2 as vague because the term “former  
6 Plaintiffs” is undefined, and it is thus unclear the extent of the information Plaintiffs  
7 seek to obtain.

8 Defendants object to Interrogatory No. 2 as overbroad to the extent that it  
9 seeks information related to aliens who have posted bond and been released from  
10 immigration custody, who were otherwise released from or exited immigration  
11 custody, or whose detention authority has changed from 8 U.S.C. § 1226(a) to  
12 another provision.

13 Defendants object to Interrogatory No. 2 as premature because this case  
14 presents purely legal questions concerning the constitutionality of 8 U.S.C. §  
15 1226(a). Section 1226(a) provides that consideration of ability to pay and  
16 alternatives to detention when setting an alien’s initial bond is a discretionary  
17 determination; and does not require that an alien who is determined to present a  
18 flight risk have an initial bond set below the \$1,500 statutory minimum; and does not  
19 require consideration of alternatives to a full cash bond, or alternatives to detention  
20 when setting an initial bond for an alien who is determined to present a flight risk.  
21 Because these questions are purely legal, Plaintiffs have not demonstrated the  
22 required need for the discovery they seek. *See Am. States Ins. Co. v. Hubbard*, 2017  
23 U.S. Dist. LEXIS 112790 (C.D. Cal. Feb. 14, 2017).

24 Defendants further object to Interrogatory No. 2 as premature because the  
25 Ninth Circuit has exercised jurisdiction to review the constitutional and jurisdictional  
26 claims at issue, submitted this case for a decision after argument on July 11, 2017,  
27 and has not yet issued a decision. It is therefore premature to proceed with discovery  
28

1 as to this interrogatory, which is intertwined with the merits of the preliminary  
2 injunction order that is currently before the Ninth Circuit. Any decisions concerning  
3 discovery and its scope should be stayed pending the Ninth Circuit's forthcoming  
4 decision regarding the preliminary injunction appeal in this case, which is likely to  
5 provide substantial guidance to this Court and the parties in resolving (or  
6 eliminating) discovery and jurisdictional issues.

7 Defendants further object to Interrogatory No. 2 as unduly burdensome.  
8 Defendants have not identified individual Plaintiffs and former Plaintiffs, as the  
9 information is not readily available given the manner in which DHS databases are  
10 configured. Further, detention under 8 U.S.C. § 1226(a) is not captured or  
11 categorized in this manner in DHS databases.

12 Therefore, the requested information will need to be processed manually,  
13 likely at great cost, due to the broad time period of this request, and with significant  
14 workforce effort, and would be an undue burden on Defendants that outweighs any  
15 benefit likely to be garnered by Plaintiffs. As discussed above, the burden and  
16 expense of the proposed discovery outweighs its likely benefit because this matter  
17 presents a constitutional challenge to Defendants' policies and practices, and the  
18 parties do not contest the relevant facts regarding those policies and practices. In  
19 particular, the parties agree that immigration officials and immigration judges are not  
20 required under current policy to engage in a freestanding inquiry and consider a non-  
21 citizen's financial circumstances in every single case, even where the non-citizen has  
22 not put his or her financial circumstances at issue, and that immigration officials and  
23 immigration judges are free to consider "ability to pay" when they, in their  
24 discretion, deem it relevant.

25 Defendants object to Interrogatory No. 2 as disproportionate to the needs of  
26 the case considering the negligible potential importance of the discovery in resolving  
27 the issues, and whether the burden or expense of the proposed discovery outweighs  
28

its likely benefit. Because this case presents legal questions, disposition on summary judgment is appropriate.

**B. Plaintiffs' Contentions**

1. Defendants have withdrawn their objection regarding vagueness.

2. Plaintiffs' position regarding Defendants' contention that the requested information regarding current and former class members is not relevant is addressed *supra* Section IV.B.1.

3. Plaintiffs' position regarding Defendants' contention that no discovery should take place in this case is addressed *supra* Section I.A.1.

4. Plaintiffs' position regarding Defendants' vague and unsubstantiated assertion of undue burden against producing information regarding class members is addressed *supra* Section IV.B.2.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XIV. INTERROGATORY NO. 1 TO DOJ:**

Identify all PLAINTIFFS and former PLAINTIFFS who were or are members of the certified class at any time between November 10, 2016 and the date of DEFENDANT'S response to this request, including the PLAINTIFF's name, alien number, detention facility in the Central District of California, date of initial detention, dates of any CUSTODY REDETERMINATION HEARINGS and the outcomes of those HEARINGS (including any bond amount set and any other conditions of release), the date and outcomes of any appeals of decisions resulting from those HEARINGS, the date of and reason for their release, if any, immigration attorney or attorneys, if any, and address and phone number of immigration attorney or attorneys.

**A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 1 TO DOJ:**

1 Defendants object to Interrogatory No. 1 as inappropriate, premature,  
2 compound, unduly burdensome, overbroad as to scope and time, vague, not relevant  
3 to any party's claim or defense, and disproportionate to the needs of the case  
4 considering the importance of the discovery in resolving the issues, and whether the  
5 burden or expense of the proposed discovery outweighs its likely benefit. Because  
6 this case presents legal issues, disposition on summary judgment is appropriate; there  
7 are no genuine issues of fact in dispute that would benefit from discovery.

8 Defendants object to Interrogatory No. 1 as vague because the term "former  
9 Plaintiffs" is undefined, and it is thus unclear the extent of the information Plaintiffs  
10 seek to obtain. Moreover, to the extent "former Plaintiffs" include individuals who  
11 are no longer detained, Defendants object to Interrogatory No. 1 as overly broad and  
12 not relevant. This information is not "of consequence in determining" Plaintiffs'  
13 claims that Defendants have violated the constitutional rights of the class members  
14 by not requiring that ability to pay be considered in setting a bond, by requiring a  
15 cash bond, and/or by not considering failure to post bond as a changed circumstance  
16 or any of the factors needed to establish the propriety of a permanent injunction. *See*  
17 Fed. R. Evid. 401 (defining "relevance").

18 Defendants object to Interrogatory No. 1 as overly broad because it seeks  
19 attorney information, including name and contact information that is not relevant to  
20 the claims or defenses in this case.

21 Defendants object to Interrogatory No. 1 as premature because this case  
22 presents purely legal questions concerning the constitutionality of 8 U.S.C. §  
23 1226(a). Section 1226(a) provides that consideration of ability to pay and  
24 alternatives to detention when setting an alien's initial bond is a discretionary  
25 determination. Section 1226(a) does not require that an immigration judge set an  
26 initial or redetermined bond below the \$1,500 statutory minimum for an alien who  
27 presents a flight risk. Moreover, section 1226(a) does not require that EOIR consider  
28



1 alternatives to a full cash bond, or alternatives to detention when setting an initial  
2 bond for an alien who presents a flight risk. Because these questions are purely legal,  
3 Plaintiffs have not demonstrated the required need for the discovery they seek. *See*  
4 *Am. States Ins. Co. v. Hubbard*, 2017 U.S. Dist. LEXIS 112790 (C.D. Cal. Feb. 14,  
5 2017).

6 Defendants further object to Interrogatory No. 1 as premature because the  
7 Ninth Circuit has exercised jurisdiction to review the constitutional and jurisdictional  
8 claims at issue, submitted this case for a decision after argument on July 11, 2017,  
9 and has not yet issued a decision. It is therefore premature and inappropriate to  
10 proceed with discovery as to this interrogatory, which is intertwined with the merits  
11 of the preliminary injunction order that is currently before the Ninth Circuit. Any  
12 decisions concerning discovery and its scope should be stayed pending the Ninth  
13 Circuit's forthcoming decision regarding the preliminary injunction appeal in this  
14 case, which is likely to provide substantial guidance to this Court and the parties in  
15 resolving (or eliminating) discovery and jurisdictional issues, while simultaneously  
16 conserving judicial resources.

17 Defendants object to Interrogatory No. 1 as overbroad to the extent Plaintiffs  
18 seek personal, private information of individuals that is protected from disclosure by  
19 the Privacy Act, 5 U.S.C. § 552a *et seq.*, concerning aliens who were represented by  
20 counsel when their initial bonds were set.

21 Defendants further object that the nine subparts of Interrogatory No. 1  
22 constitute nine separate and discrete interrogatories.

23 Defendants further object to Interrogatory No. 1 as overbroad and  
24 disproportionate to the needs of this case, to the extent that it seeks information  
25 related to aliens who have posted bond and been released from immigration custody,  
26 who were otherwise released from or exited immigration custody, and whose  
27 detention authority has changed from 8 U.S.C. § 1226(a) to another provision.

1        Additionally, the database records of individual aliens are not relevant to the  
2 claims and defenses in this case because Plaintiffs allegedly challenge the policies  
3 and practices of Defendants, rather than the individual bond determinations made for  
4 each Plaintiff. Thus, individual records are not “of consequence in determining”  
5 Plaintiffs’ claims. *Id.*

6        Defendants further object to Interrogatory No. 1 as unduly burdensome and  
7 disproportionate to the needs of the case. The data sought requires significant  
8 manual, case-by-case review to locate, extract, and process the requested  
9 information. Plaintiffs request the identity and information concerning “all  
10 PLAINTIFFS and former PLAINTIFFS who were members of the certified class at  
11 any time between November 10, 2016 and the date of DEFENDANT’S response.”  
12 This requested information is not readily identifiable given the capabilities of the  
13 EOIR database. In order to compile the requested information, Defendants must first  
14 retrieve from its database a list of all those who have been detained, whether under 8  
15 U.S.C. § 1226(a) or otherwise. The EOIR database does not specifically track  
16 individuals by which detention authority they are detained under, so a simple query  
17 containing the variables in Plaintiffs’ request would not suffice. To provide a list of  
18 only those detained under 8 U.S.C. § 1226(a), Defendant would need to embark on a  
19 time and labor intensive review of the paper record for each respondent on the  
20 detainee list originally retrieved. Once the requested list of individuals is deduced, it  
21 then would require case-by-case processing to extract the requested information and  
22 then review and produce it. There are likely thousands of immigration detainees that  
23 have been detained pursuant to 8 U.S.C. § 1226(a) who would constitute current and  
24 former Plaintiffs. Even limiting the request to those filed regarding current Plaintiffs,  
25 there are hundreds of individual files to review.

26        Therefore, the requested information will need to be processed manually, at  
27 great cost, due to the broad time period of this request, with a significant workforce  
28

1 effort, and would be an undue burden on Defendants that outweighs any benefit  
2 likely to be garnered by Plaintiffs. As discussed above, the burden and expense of  
3 the proposed discovery outweighs its likely benefit because this matter presents a  
4 constitutional challenge to Defendants' policies and practices, and the parties do not  
5 contest the relevant facts regarding those policies and practices. In particular, the  
6 parties agree that immigration officials and immigration judges are not required  
7 under current policy to engage in a free-standing inquiry and consider a non-citizen's  
8 financial circumstances in every single case, even where the non-citizen has not put  
9 his or her financial circumstances at issue, and that immigration officials and  
10 immigration judges are free to consider "ability to pay" when they, in their  
11 discretion, deem it relevant.

12 **B. Plaintiffs' Contentions**

- 13 1. Plaintiffs' position regarding Defendants' contention that no discovery  
14 should take place in this case is addressed *supra* Section I.A.1.
- 15 2. Defendants have withdrawn their objection regarding vagueness.
- 16 3. Plaintiffs' position regarding Defendants' contention that the requested  
17 information regarding current and former class members is not relevant is addressed  
18 *supra* Section IV.B.1.
- 19 4. Plaintiffs' position regarding Defendants' withholding of information  
20 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
21 Section IV.B.2.
- 22 5. Defendants withdrew their objection regarding subparts.
- 23 6. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
24 assertion of undue burden against producing information regarding class members is  
25 addressed *supra* Section IV.B.2.

26 **C. Defendants' Contentions**

27 [TO COME FROM DEFENDANTS]

1 **XV. INTERROGATORY NO. 2 TO DOJ:**

2 Identify the steps through which DEFENDANT identified PLAINTIFFS and  
3 former PLAINTIFFS and their information, as requested in Interrogatory No. 1,  
4 above.

5 **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 2 TO**  
6 **DOJ:**

7 Defendants object to this interrogatory as premature, vague, overbroad as to  
8 scope, and ambiguous with respect to its request to identify "the steps through which  
9 DEFENDANTS identified PLAINTIFFS." The term "steps" is undefined, and it is  
10 thus unclear what information Plaintiffs seek to obtain.

11 Defendants object to Interrogatory No. 2 as vague because the term "former  
12 Plaintiffs" is undefined, and it is thus unclear the extent of the information Plaintiffs  
13 seek to obtain.

14 Defendants object to Interrogatory No. 2 as overbroad to the extent that it  
15 seeks information related to aliens who have posted bond and been released from  
16 immigration custody, who were otherwise released from or exited immigration  
17 custody, or whose detention authority has changed from 8 U.S.C. § 1226(a) to  
18 another provision.

19 Defendants object to Interrogatory No. 2 as premature because this case  
20 presents purely legal questions concerning the constitutionality of 8 U.S.C. §  
21 1226(a). Section 1226(a) provides that consideration of ability to pay and  
22 alternatives to detention when setting an alien's initial bond is a discretionary  
23 determination; and does not require that an alien who is determined to present a  
24 flight risk have an initial bond set below the \$1,500 statutory minimum; and does not  
25 require consideration of alternatives to a full cash bond, or alternatives to detention  
26 when setting an initial bond for an alien who is determined to present a flight risk.  
27 Because these questions are purely legal, Plaintiffs have not demonstrated the  
28

1 required need for the discovery they seek. *See Am. States Ins. Co. v. Hubbard*, 2017  
2 U.S. Dist. LEXIS 112790 (C.D. Cal. Feb. 14, 2017).

3 Defendants object to Interrogatory No. 2 as also premature because the Ninth  
4 Circuit has exercised jurisdiction to review the constitutional and jurisdictional  
5 claims at issue, submitted this case for a decision after argument on July 11, 2017,  
6 and has not yet issued a decision. It is therefore premature and inappropriate to  
7 proceed with discovery as to this interrogatory, which is intertwined with the merits  
8 of the preliminary injunction order that is currently before the Ninth Circuit. Any  
9 decisions concerning discovery and its scope should be stayed pending the Ninth  
10 Circuit's forthcoming decision regarding the preliminary injunction appeal in this  
11 case, which is likely to provide substantial guidance to this Court and the parties in  
12 resolving (or eliminating) discovery and jurisdictional issues, while simultaneously  
13 conserving judicial resources.

14 Defendants object to Interrogatory No. 2 as unduly burdensome. Defendants  
15 have not identified individual Plaintiffs and former Plaintiffs, as the requested  
16 information is not readily identifiable given the capabilities of the EOIR database.  
17 Further, detention under 8 U.S.C. § 1226(a) is not captured or categorized in this  
18 manner in EOIR database.

19 Therefore, the requested information will need to be processed manually, at  
20 great cost, due to the broad time period of this request, and with a significant  
21 workforce effort, and would be an undue burden on Defendants that outweighs any  
22 benefit likely to be garnered by Plaintiffs. As discussed above, the burden and  
23 expense of the proposed discovery outweighs its likely benefit because this matter  
24 presents a constitutional challenge to Defendants' policies and practices, and the  
25 parties do not contest the relevant facts regarding those policies and practices. In  
26 particular, the parties agree that immigration officials and immigration judges are not  
27 required under current policy to engage in a free-standing inquiry and consider a  
28

1 non-citizen's financial circumstances in every single case, even where the non-  
2 citizen has not put his or her financial circumstances at issue, and that immigration  
3 officials and immigration judges are free to consider "ability to pay" when they, in  
4 their discretion, deem it relevant.

5 Defendants object to Interrogatory No. 2 as disproportionate to the needs of  
6 the case considering the negligible potential importance of the discovery in resolving  
7 the issues, and whether the burden or expense of the proposed discovery outweighs  
8 its likely benefit. Because this case presents legal issues, disposition on summary  
9 judgment is appropriate; there are no genuine issues of fact in dispute that would  
10 benefit from discovery.

11 **B. Plaintiffs' Contentions**

12 1. Defendants have withdrawn their objection regarding vagueness.

13 2. Plaintiffs' position regarding Defendants' contention that the requested  
14 information regarding current and former class members is not relevant is addressed  
15 *supra* Section IV.B.1.

16 3. Plaintiffs' position regarding Defendants' contention that no discovery  
17 should take place in this case is addressed *supra* Section I.A.1.

18 4. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
19 assertion of undue burden against producing information regarding class members is  
20 addressed *supra* Section IV.B.2.

21 **C. Defendants' Contentions**

22 [TO COME FROM DEFENDANTS]

23 **XVI. GENERAL OBJECTION NO. 3 TO PLAINTIFFS' RFPS TO DHS:**

24 Defendants object to these requests to the extent the requested information is  
25 not categorized in the DHS databases in the manner Plaintiffs request. For example,  
26 the detention authority under which an individual is detained is not separately  
27 captured in any DHS databases. There are also not specific fields for much of the  
28

1 data requested. Compiling data for a time range requires the compilation of  
2 snapshots taken throughout the time period and must be done manually. Therefore,  
3 in order to respond to the requests, the database would need to be manually queried  
4 on a case-by-case basis, at great cost and with a significant workforce effort, and  
5 would be an undue burden on Defendants that outweighs any benefit likely to be  
6 garnered by Plaintiffs.

7 **A. Plaintiffs' Contentions**

8 1. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
9 assertion of undue burden against producing information regarding class members is  
10 addressed *supra* Section IV.B.2.

11 **B. Defendants' Contentions**

12 [TO COME FROM DEFENDANTS]

13 **XVII. GENERAL OBJECTION NO. 3 TO PLAINTIFFS' RFPS TO DOJ:**

14 Defendants object to these requests to the extent the requested information is  
15 not categorized in the EOIR database in the manner Plaintiffs request. For example,  
16 detention specifically under 8 U.S.C. § 1226(a) is not separately captured in the  
17 database. Therefore, the database would need to be manually queried on a case-by-  
18 case basis, at great cost and with a significant workforce effort, and would be an  
19 undue burden on Defendants that outweighs any benefit likely to be garnered by  
20 Plaintiffs.

21 **A. Plaintiffs' Contentions**

22 1. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
23 assertion of undue burden against producing information regarding class members is  
24 addressed *supra* Section IV.B.2.

25 **B. Defendants' Contentions**

26 [TO COME FROM DEFENDANTS]

27 **XVIII. GENERAL OBJECTION NO. 4 TO PLAINTIFFS'**  
28 **INTERROGATORIES TO DHS:**



1 Defendants object to these interrogatories to the extent the requested  
2 information is not readily available given the manner in which DHS databases are  
3 configured. For example, the detention authority under which an individual is  
4 detained is not separately captured in any DHS databases. There are also not specific  
5 fields for much of the data requested. Compiling data for a time range requires the  
6 compilation of snapshots taken throughout the time period and must be done  
7 manually. Therefore, in order to respond to the requests, the database would need to  
8 be manually queried on a case-by-case basis, at great cost and with a significant  
9 workforce effort, and would be an undue burden on Defendants that outweighs any  
10 benefit likely to be garnered by Plaintiffs.

11 **A. Plaintiffs' Contentions**

12 1. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
13 assertion of undue burden against producing information regarding class members is  
14 addressed *supra* Section IV.B.2.

15 **B. Defendants' Contentions**

16 [TO COME FROM DEFENDANTS]

17 **XIX. GENERAL OBJECTION NO. 4 TO PLAINTIFFS'**  
18 **INTERROGATORIES TO DOJ:**

19 Defendants object to these interrogatories to the extent the requested  
20 information is not categorized in the EOIR database in the manner Plaintiffs request.  
21 For example, detention specifically under 8 U.S.C. § 1226(a) is not separately  
22 captured in the database. Therefore, the database would need to be manually queried  
23 on a case-by-case basis, at great cost and with a significant workforce effort, and  
24 would be an undue burden on Defendants that outweighs any benefit likely to be  
25 garnered by Plaintiffs.

26 **A. Plaintiffs' Contentions**

1 1. Plaintiffs' position regarding Defendants' vague and unsubstantiated  
2 assertion of undue burden against producing information regarding class members is  
3 addressed *supra* Section IV.B.2.

4 **B. Defendants' Contentions**

5 [TO COME FROM DEFENDANTS]

6 **XX. GENERAL OBJECTION NO. 2 TO PLAINTIFFS'**  
7 **INTERROGATORIES TO DHS:**

8 Defendants object to the extent that the number of interrogatories, when the  
9 sub-parts are included, exceed the number of interrogatories that may be propounded  
10 without leave of court, in violation of Fed. R. Civ. P. 33(a)(1).

11 **A. Plaintiffs' Contentions**

12 Defendants have withdrawn their objection regarding subparts.

13 **B. Defendants' Contentions**

14 [TO COME FROM DEFENDANTS]

15 **XXI. GENERAL OBJECTION NO. 2 TO PLAINTIFFS'**  
16 **INTERROGATORIES TO DOJ:**

17 Defendants object to the extent that the number of interrogatories, when the  
18 sub-parts are included, exceed the number of interrogatories that may be propounded  
19 without leave of court. Fed. R. Civ. P. 33(a)(1).

20 **A. Plaintiffs' Contentions**

21 Defendants have withdrawn their objection regarding subparts.

22 **B. Defendants' Contentions**

23 [TO COME FROM DEFENDANTS]

24 **REQUESTS AND OBJECTIONS REGARDING DEFENDANTS' POLICIES,**  
25 **PROCEDURES AND GENERAL PRACTICES FOR CUSTODY**  
26 **DETERMINATIONS**

27 **XXII. RFP NO. 4 TO DHS:**  
28

1 All DOCUMENTS and COMMUNICATIONS CONCERNING  
2 DEFENDANT’S policies, procedures, practices, forms, and trainings about  
3 CUSTODY DETERMINATIONS in the Central District of California.

4 **A. DEFENDANTS’ OBJECTIONS TO RFP NO. 4 TO DHS:**

5 Defendants object to RFP No. 4 as inappropriate in this case, which presents  
6 purely legal questions. Because this case presents legal issues, disposition on  
7 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
8 would benefit from discovery. Further, any decisions concerning discovery and its  
9 scope should be stayed pending the Ninth Circuit’s forthcoming decision, which is  
10 likely to provide substantial guidance in resolving (or eliminating) discovery and  
11 jurisdictional issues.

12 Further, subject to objections that apply to all RFPs and objections to any  
13 applicable definitions above, Defendants object to RFP No. 4 in that it seeks  
14 information that likely is protected under the attorney-client privilege, the attorney-  
15 work product protection, the deliberative process privilege, the law-enforcement  
16 sensitive protection, the law-enforcement privilege, and/or other government  
17 privileges.

18 Defendants also object to RFP No. 4 because it is vague. It is unclear what  
19 types of documents Plaintiffs are seeking in their request.

20 Defendants also object to RFP No. 4 as overbroad because it seeks  
21 information not relevant to the claims and defenses in this case. Any document or  
22 communication regarding Defendants’ historical policies, procedures, practices,  
23 form, and trainings are not “of consequence in determining” Plaintiffs’ claims that  
24 Defendants’ current policies and practices have violated the constitutional rights of  
25 the class members by not requiring that ability to pay be considered in setting a  
26 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
27 changed circumstance. *See* Fed. R. Evid. 401 (defining “relevance”).

1 Defendants also object to RFP No. 4 because it seeks information which is not  
2 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
3 information that likely resides with a large number of individuals that are involved  
4 with policies, procedures, practices, forms, and trainings. It would take significant  
5 resources to collect, inspect, and produce any responsive information.

6 Therefore, the burden and expense of the proposed discovery outweighs its  
7 likely benefit because this matter presents a constitutional challenge to Defendants'  
8 policies and practices, and the parties do not contest the relevant facts regarding  
9 those policies and practices. In particular, the parties agree that immigration officials  
10 and immigration judges are not required under current policy to engage in a free-  
11 standing inquiry and consider a non-citizen's financial circumstances in every single  
12 case, even where the non-citizen has not put his or her financial circumstances at  
13 issue, and that immigration officials and immigration judges are free to consider  
14 "ability to pay" when they, in their discretion, deem it relevant. Thus, information  
15 regarding Defendants' policies, procedures, practices, forms, and trainings regarding  
16 custody determinations are not relevant in determining whether the Constitution  
17 requires consideration of "ability to pay" in every case.

18 **DEFENDANTS' RESPONSE TO RFP NO. 4 TO DHS:**

19 Pursuant to the above objections, no documents will be produced in response  
20 to this request.

21 **B. Plaintiffs' Contentions**

- 22 1. Information Regarding the Government's Policies, Procedures  
23 and General Practices Regarding Custody Determinations and  
24 other Contexts Where a Person's Ability to Pay is Considered are  
Relevant to the Parties' Claims and Defenses.

25 The parties' litigation positions, as well as the District Court's order granting a  
26 preliminary injunction, confirm that there is discoverable information concerning  
27  
28

1 Defendants' policies, procedures and practices regarding custody determinations  
2 relevant to the claims and defenses at issue in this case.

3       **First**, some of Plaintiffs' discovery requests seek to determine whether  
4 Defendants follow the procedures they say they do. For instance, Defendants assert  
5 that immigration officials already consider ability to pay at custody determinations in  
6 certain circumstances. *See* Opening Br. Of Defs.- Appellants at 28-29, 35,  
7 *Hernandez v. Lynch*, No. 16-56829 (9th Cir. Feb. 1, 2017), ECF No. 13. Plaintiffs  
8 have the right to test that assertion through discovery into the nature and operation of  
9 that alleged practice. *See Green v. Baca*, 219 F.R.D. 485, 493 (C.D. Cal. 2003)  
10 (ruling that Plaintiff was entitled to discovery on "defendant's customs and  
11 policies . . . because the evidence, which concerns important constitutional issues, is  
12 critical to plaintiff's ability to prove his case"). Relatedly, publicly available  
13 materials instruct DHS officers to consider financial circumstances when setting  
14 bond for certain detainees—namely, children and mothers detained in family  
15 detention facilities. *See* Pls.- Pets.' Not. of Mot. and Mot. for Class-Wide Prelim. Inj.  
16 and P&A at 7, *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. May  
17 19, 2016), ECF No. 45. In light of Defendants' insistence that it would be overly  
18 burdensome and/or impractical to institute the permanent injunctive relief Plaintiffs  
19 request, the fact that Defendants *already* implement similar procedures in some  
20 cases, and the operation of those procedures, is relevant.

21       **Second**, Defendants have raised numerous factual disputes concerning their  
22 existing practices. For example, their Answer denies that an inability to post bond is  
23 not a "changed circumstance" that would support a bond redetermination hearing  
24 under the regulations, Defs.' Answer ¶ 29, *Hernandez v. Sessions III*, No. 5:16-  
25 00620-JGB-KK (C.D. Cal. May 16, 2017), ECF No. 107; denies that ICE and  
26 immigration judges in practice routinely set high bonds, *id.*, ¶ 30, and denies that  
27 ICE and immigration judges are not required to consider alternative conditions of  
28

1 release when setting bonds, *id.*, ¶ 38. Defendants have also disputed that the named  
2 Plaintiffs' cases are typical of the class. See *id.*, ¶ 40. These disputes cannot be  
3 resolved without fact discovery.

4 ***Third***, Defendants have repeatedly stated that Plaintiffs' requested relief will  
5 fundamentally alter the operation of the immigration courts, while at the same time  
6 claiming that it would make no meaningful difference in the outcomes of bond  
7 proceedings. For instance, Defendants have said that requiring immigration judges to  
8 consider ability to pay would "create an incentive for judges to issue 'no-bond'  
9 orders." Opening Br. of Defs.- Appellants at 43, *Hernandez v. Lynch*, No. 16-56829  
10 (9th Cir. Feb. 1, 2017), ECF No. 13. But they have *also* said that requiring  
11 consideration of financial circumstances "focuses on semantics and form over  
12 substance," Reply Br. of Defs.'- Appellants at 21, *Hernandez v. Lynch*, No. 16-  
13 56829 (9th Cir. Mar. 15, 2017), ECF No. 48, and would have "no meaningful effect  
14 other than prolonging the process," *id.* at 23-24. Regardless of what position  
15 Defendants ultimately settle on, Plaintiffs are entitled to discovery to determine, for  
16 example, whether it is true that requiring consideration of ability to pay or alternative  
17 conditions would create improper incentives for Immigration Judges, or whether it  
18 would needlessly delay bond hearings. Such questions cannot be answered without  
19 knowing more about the operation of Defendants' existing procedures, and how  
20 Defendants' officers would behave under new legal requirements that require  
21 consideration of ability to pay and alternative conditions.

22 2. Plaintiffs' Position on Remaining Objections.

23 1. Plaintiffs' position regarding Defendants' contention that no discovery  
24 should take place in this case is addressed *supra* Section I.A.1.

25 2. Plaintiffs' position regarding Defendants' withholding of information  
26 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
27 Section IV.B.2.

1           3. Defendants have withdrawn their objection regarding vagueness.

2           4. Defendants have agreed to meet and confer with Plaintiffs regarding  
3 potential custodians and search terms for locating information responsive to this  
4 request, but only if the Court compels Defendants to engage in discovery.

5           **C. Defendants' Contentions**

6           [TO COME FROM DEFENDANTS]

7           **XXIII. RFP NO. 5 TO DHS:**

8           All DOCUMENTS and COMMUNICATIONS CONCERNING  
9 DEFENDANT'S policies, procedures, practices, forms, and trainings for DHS  
10 attorneys in the Office of Chief Counsel about CUSTODY REDETERMINATION  
11 HEARINGS in the Central District of California.

12           **A. DEFENDANTS' OBJECTIONS TO RFP NO. 5 TO DHS:**

13           Defendants object to RFP No. 5 as inappropriate in this case, which presents  
14 purely legal questions. Because this case presents legal issues, disposition on  
15 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
16 would benefit from discovery. Further, any decisions concerning discovery and its  
17 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
18 likely to provide substantial guidance in resolving (or eliminating) discovery and  
19 jurisdictional issues.

20           Further, subject to objections that apply to all RFPs and objections to any  
21 applicable definitions above, Defendants object to RFP No. 5 in that it seeks  
22 information that likely is protected under the attorney-client privilege, the attorney-  
23 work product protection, the deliberative process privilege, the law-enforcement  
24 sensitive protection, the law-enforcement privilege, and/or other government  
25 privileges.

26           Defendants also object to RFP No. 5 because it is vague. It is unclear what  
27 types of documents Plaintiffs are seeking in their request.



1 Defendants also object to RFP No. 5 as overbroad because it seeks  
2 information not relevant to the claims and defenses in this case. Any document or  
3 communication regarding Defendants' historical policies, procedures, practices,  
4 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
5 Defendants' current policies and practices have violated the constitutional rights of  
6 the class members by not requiring that ability to pay be considered in setting a  
7 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
8 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

9 Defendants also object to RFP No. 5 because it seeks information which is not  
10 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
11 information that likely resides with a large number of individuals that are involved  
12 with policies, procedures, practices, forms, and trainings. It would take significant  
13 resources to collect, inspect, and produce any responsive information.

14 Therefore, the burden and expense of the proposed discovery outweighs its  
15 likely benefit because this matter presents a constitutional challenge to Defendants'  
16 policies and practices, and the parties do not contest the relevant facts regarding  
17 those policies and practices. In particular, the parties agree that immigration officials  
18 and immigration judges are not required under current policy to engage in a free-  
19 standing inquiry and consider a non-citizen's financial circumstances in every single  
20 case, even where the non-citizen has not put his or her financial circumstances at  
21 issue, and that immigration officials and immigration judges are free to consider  
22 "ability to pay" when they, in their discretion, deem it relevant. Thus, information  
23 regarding Defendants' policies, procedures, practices, forms, and trainings regarding  
24 custody redetermination hearings are not relevant in determining whether the  
25 Constitution requires consideration of "ability to pay" in every case.

26 **DEFENDANTS' RESPONSE TO RFP NO. 5 TO DHS:**

1 Pursuant to the above objections, no documents will be produced in response  
2 to this request.

3 **B. Plaintiffs' Contentions**

4 1. Plaintiffs' request seeks information concerning DHS Office of Chief  
5 Counsel (OCC)'s policies, procedures and practices for custody determinations. DHS  
6 OCC represents the Government at removal proceedings, including at bond hearings  
7 conducted in the immigration courts. For the reasons set forth above with respect to  
8 DHS RFP No. 4, information concerning the Government's policies, procedures and  
9 practices at bond hearings is plainly relevant to the parties' claims and defenses in  
10 this case. Defendants' objections to this request have been previously addressed by  
11 Plaintiffs:

12 2. Plaintiffs' position regarding Defendants' contention that no discovery  
13 should take place in this case is addressed *supra* Section I.A.1.

14 3. Plaintiffs' position regarding Defendants' withholding of information  
15 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
16 Section IV.B.2.

17 4. Defendants have withdrawn their objection regarding vagueness.

18 5. Plaintiffs' position that information regarding Defendants' policies,  
19 procedures and general practices regarding custody determinations and other  
20 contexts where a person's ability to pay is considered are relevant to the parties'  
21 claims and defenses is addressed *supra* Section XXII.B.1.

22 6. Defendants have agreed to meet and confer with Plaintiffs regarding  
23 potential custodians and search terms for locating information responsive to this  
24 request, but only if the Court compels Defendants to engage in discovery.

25 **C. Defendants' Contentions**

26 [TO COME FROM DEFENDANTS]

27 **XXIV. RFP NO. 6 TO DHS:**

1 All DOCUMENTS and COMMUNICATIONS CONCERNING  
2 DEFENDANT’S policies, procedures, practices, forms, and trainings  
3 CONCERNING IMMIGRATION BONDS and ALTERNATIVE BONDS in the  
4 Central District of California, including the process and requirements for posting  
5 bond; the process for depositing and/or managing bond payments; process and  
6 requirements for the return of bond payments; the process and requirements for bond  
7 forfeiture; the process and requirements for bail bonds companies to act as a surety;  
8 contracts or agreements between bail bonds companies and Defendant; and any  
9 audits or evaluations of bail bonds companies.

10 **A. DEFENDANTS’ OBJECTIONS TO RFP NO. 6 TO DHS:**

11 Defendants object to RFP No. 6 as inappropriate in this case, which presents  
12 purely legal questions. Because this case presents legal issues, disposition on  
13 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
14 would benefit from discovery. Further, any decisions concerning discovery and its  
15 scope should be stayed pending the Ninth Circuit’s forthcoming decision, which is  
16 likely to provide substantial guidance in resolving (or eliminating) discovery and  
17 jurisdictional issues.

18 Further, subject to objections that apply to all RFPs and objections to any  
19 applicable definitions above, Defendants object to RFP No. 6 in that it seeks  
20 information that likely is protected under the attorney-client privilege, the attorney-  
21 work product protection, the deliberative process privilege, the law-enforcement  
22 sensitive protection, the law-enforcement privilege, and/or other government  
23 privileges.

24 Defendants also object to RFP No. 6 because it is vague. It is unclear what  
25 types of documents Plaintiffs are seeking in their request.

26 Defendants also object to RFP No. 6 as overbroad because it seeks  
27 information not relevant to the claims and defenses in this case. Any document or  
28

1 communication regarding Defendants' historical policies, procedures, practices,  
2 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
3 Defendants' current policies and practices have violated the constitutional rights of  
4 the class members by not requiring that ability to pay be considered in setting a  
5 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
6 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

7       Additionally, documents and communications concerning the process and  
8 requirements for posting bond; the process for depositing and/or managing bond  
9 payments; process and requirements for the return of bond payments; the process and  
10 requirements for bond forfeiture; the process and requirements for bail bonds  
11 companies to act as a surety; contracts or agreements between bail bonds companies  
12 and Defendant; and any audits or evaluations of bail bonds companies are not "of  
13 consequence in determining" Plaintiffs' claim that the requirement to post all cash  
14 bonds violates Plaintiffs' constitutional rights. *Id.* Moreover, as made clear in 8  
15 C.F.R. § 103.6, the regulation of sureties are under the purview of the U.S.  
16 Department of Treasury.

17       Defendants also object to RFP No. 6 because it seeks information which is not  
18 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
19 information that likely resides with a large number of individuals that are involved  
20 with policies, procedures, practices, forms, and trainings. It would take significant  
21 resources to collect, inspect, and produce any responsive information.

22       Therefore, the burden and expense of the proposed discovery outweighs its  
23 likely benefit because this matter presents a constitutional challenge to Defendants'  
24 policies and practices, and the parties do not contest the relevant facts regarding  
25 those policies and practices. In particular, the parties agree that immigration officials  
26 and immigration judges are not required under current policy to engage in a free-  
27 standing inquiry and consider a non-citizen's financial circumstances in every single  
28

1 case, even where the non-citizen has not put his or her financial circumstances at  
2 issue, and that immigration officials and immigration judges are free to consider  
3 “ability to pay” when they, in their discretion, deem it relevant. The parties also  
4 agree that current policy requires the posting of full cash bonds. Thus, information  
5 regarding Defendants’ policies, procedures, practices, forms, and trainings regarding  
6 bonds and alternative bonds are not relevant in determining whether the Constitution  
7 requires consideration of “ability to pay” in every case or whether the requirement to  
8 post full cash bonds is unconstitutional.

9 **DEFENDANTS’ RESPONSE TO RFP NO. 6 TO DHS:**

10 Pursuant to the above objections, no documents will be produced in response  
11 to this request.

12 **B. Plaintiffs’ Contentions**

13 1. Plaintiffs’ requests seek information concerning DHS’s policies,  
14 procedures and practices concerning the posting of bond and the availability of  
15 “alternative bonds” (bonds that do not require the posting of the full cash value, such  
16 as property bonds or collateral bonds). Plaintiffs specifically challenge Defendants’  
17 alleged requirement that detainees post the full cash value of a bond and, unlike  
18 commonly available in the criminal justice system, do not make available  
19 “alternative bonds.” *See* Compl.- Class Action ¶ 46, *Hernandez v. Lynch*, No. 16-620  
20 (C.D. Cal. Apr. 6, 2016), ECF No. 1. Information concerning Defendants’ policies,  
21 procedures and practices concerning the posting of bond and the availability of  
22 “alternative bonds” is plainly relevant to the parties’ claims and defenses in this case.  
23 Defendants’ objections to the request have been previously addressed by Plaintiffs:

24 2. Plaintiffs’ position regarding Defendants’ contention that no discovery  
25 should take place in this case is addressed *supra* Section I.A.1.



1 Further, subject to objections that apply to all RFPs and objections to any  
2 applicable definitions above, Defendants object to RFP No. 7 in that it seeks  
3 information that likely is protected under the attorney-client privilege, the attorney-  
4 work product protection, the deliberative process privilege, the law-enforcement  
5 sensitive protection, the law-enforcement privilege, and/or other government  
6 privileges.

7 Defendants also object to RFP No. 7 because it is vague. It is unclear what  
8 types of documents Plaintiffs are seeking in their request.

9 Defendants also object to RFP No. 7 as overbroad because it seeks  
10 information not relevant to the claims and defenses in this case. Any document or  
11 communication regarding Defendants' historical policies, procedures, practices,  
12 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
13 Defendants' current policies and practices have violated the constitutional rights of  
14 the class members by not requiring that ability to pay be considered in setting a  
15 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
16 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

17 Defendants also object to RFP No. 7 because it seeks information which is  
18 disproportionate to the needs of this case. Plaintiffs appear to seek information that  
19 likely resides with a large number of individuals that are involved with policies,  
20 procedures, practices, forms, and trainings. Moreover, alternative to detention  
21 programs are contracted with vendors that utilize a number of programs which vary  
22 by location. It would take significant financial and human resources to collect,  
23 inspect, and produce any responsive information.

24 Therefore, the burden and expense of the proposed discovery outweighs its  
25 likely benefit because this matter presents a constitutional challenge to Defendants'  
26 policies and practices, and the parties do not contest the relevant facts regarding  
27 those policies and practices. In particular, the parties agree that immigration officials  
28



1 and immigration judges are not required under current policy to engage in a free-  
2 standing inquiry and consider a non-citizen's financial circumstances in every single  
3 case, even where the non-citizen has not put his or her financial circumstances at  
4 issue, and that immigration officials and immigration judges are free to consider  
5 "ability to pay" when they, in their discretion, deem it relevant. The parties also  
6 agree that immigration officials are not required to engage in a free-standing inquiry  
7 and consider alternative conditions of release. Thus, information regarding  
8 Defendants' policies, procedures, practices, forms, and trainings regarding  
9 alternative conditions of release are not relevant in determining whether the  
10 Constitution requires consideration of "ability to pay" in every case.

11 **DEFENDANTS' RESPONSE TO RFP NO. 7 TO DHS:**

12 Pursuant to the above objections, no documents will be produced in response  
13 to this request.

14 **B. Plaintiffs' Contentions**

15 1. Plaintiffs' request seeks information concerning Defendants' policies,  
16 procedures and practices regarding non-monetary conditions of release, including the  
17 Intensive Supervision Appearance Program (ISAP). Information concerning the  
18 ISAP program and other non-monetary conditions of release—including their  
19 effectiveness at ensuring the appearance of immigration detainees at removal  
20 proceedings—is relevant to Plaintiffs' claim that Defendants' failure to consider the  
21 availability of such alternatives results in the detention of noncitizens based on their  
22 inability to pay a money bond, as well as to the Government's claims that the relief  
23 that Plaintiffs seek will be unworkable or costly. Defendants' objections to this  
24 request have been previously addressed by Plaintiffs:

25 2. Plaintiffs' position regarding Defendants' contention that no discovery  
26 should take place in this case is addressed *supra* Section I.A.1.

27

28



Further, subject to objections that apply to all RFPs and objections to any applicable definitions above, Defendants object to RFP No. 7 in that it seeks information that likely is protected under the attorney-client privilege, the attorney-work product protection, the deliberative process privilege, the law-enforcement sensitive protection, the law-enforcement privilege, and/or other government privileges.

Defendants also object to RFP No. 7 because it is vague. It is unclear what types of documents Plaintiffs are seeking in their request.

Defendants also object to RFP No. 7 as overbroad because it seeks information not relevant to the claims and defenses in this case. Any document or communication regarding Defendants' historical policies, procedures, practices, form, and trainings are not "of consequence in determining" Plaintiffs' claims that Defendants' current policies and practices have violated the constitutional rights of the class members by not requiring that ability to pay be considered in setting a bond, by requiring a cash bond, and/or by not considering failure to post bond as a changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

Defendants also object to RFP No. 7 because it seeks information which is not relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek information that likely resides with a large number of individuals that are involved with policies, procedures, practices, forms, and trainings. It would take significant resources to collect, inspect, and produce any responsive information.

**DEFENDANTS' RESPONSE TO RFP NO. 7 TO DOJ:**

Pursuant to the above objections, no documents will be produced in response to this request.

**B. Plaintiffs' Contentions**

1. Plaintiffs' position regarding Defendants' contention that no discovery should take place in this case is addressed *supra* Section I.A.1.

2. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

3. Defendants have withdrawn their objection regarding vagueness.

4. Plaintiffs' position that information regarding Defendants' policies, procedures and general practices regarding custody determinations and other contexts where a person's ability to pay is considered are relevant to the parties' claims and defenses is addressed *supra* Section XXII.B.1.

5. Defendants have agreed to meet and confer with Plaintiffs regarding potential custodians and search terms for locating information responsive to this request, but only if the Court compels Defendants to engage in discovery.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XXVII. RFP NO. 8 TO DHS:**

All DOCUMENTS and COMMUNICATIONS CONCERNING DEFENDANT'S policies, procedures, practices, forms, and trainings about IMMIGRATION DETAINEES requesting a new CUSTODY REDETERMINATION HEARING based on a material change in circumstances under 8 C.F.R. § 1003.19(e) in the Central District of California.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 8 TO DHS:**

Defendants object to RFP No. 8 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to provide substantial guidance in resolving (or eliminating) discovery and jurisdictional issues.

1 Further, subject to objections that apply to all RFPs and objections to any  
2 applicable definitions above, Defendants object to RFP No. 8 in that it seeks  
3 information that likely is protected under the attorney-client privilege, the attorney-  
4 work product protection, the deliberative process privilege, the law-enforcement  
5 sensitive protection, the law-enforcement privilege, and/or other government  
6 privileges.

7 Defendants also object to RFP No. 8 because it is vague. It is unclear what  
8 types of documents Plaintiffs are seeking in their request.

9 Defendants also object to RFP No. 8 as overbroad because it seeks  
10 information not relevant to the claims and defenses in this case. Any document or  
11 communication regarding Defendants' historical policies, procedures, practices,  
12 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
13 Defendants' current policies and practices have violated the constitutional rights of  
14 the class members by not requiring that ability to pay be considered in setting a  
15 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
16 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

17 Defendants also object to RFP No. 8 as not relevant because documents or  
18 communications regarding Defendants' policies, procedures, practices, form, and  
19 trainings regarding requesting a new custody redetermination are not "of  
20 consequence in determining" Plaintiffs' claims that Defendants do not consider the  
21 failure to post bond to be a changed circumstance. *Id.* The process to request a  
22 hearing is not related to an immigration judge's potential holding at that hearing.

23 **DEFENDANTS' RESPONSE TO RFP NO. 8 TO DHS:**

24 Pursuant to the above objections, no documents will be produced in response  
25 to this request.

26 **B. Plaintiffs' Contentions**

1           1.     Plaintiffs' request seeks information concerning Defendants' policies,  
2 procedures and practices regarding the ability of class members to request a new  
3 bond hearing. Plaintiffs specifically challenge the Defendants' alleged policy and  
4 practice of refusing to recognize a Class member's financial inability to post bond,  
5 despite having made good faith efforts to do so, as a basis for a new bond hearing.  
6 *See* Compl.- Class Action ¶ 29, *Hernandez v. Lynch*, No. 16-00620-JGB-KK (C.D.  
7 Cal. Apr. 6, 2016), ECF No. 1. Plaintiffs' request therefore seeks information that is  
8 plainly relevant to the parties' claims and defenses in this case. Defendants'  
9 objections to the request have been previously addressed by Plaintiffs:

10           2.     Plaintiffs' position regarding Defendants' contention that no discovery  
11 should take place in this case is addressed *supra* Section I.A.1.

12           3.     Plaintiffs' position regarding Defendants' withholding of information  
13 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
14 Section IV.B.2.

15           4.     Defendants have withdrawn their objection regarding vagueness.

16           5.     Plaintiffs' position that information regarding Defendants' policies,  
17 procedures and general practices regarding custody determinations and other  
18 contexts where a person's ability to pay is considered are relevant to the parties'  
19 claims and defenses is addressed *supra* Section XXII.B.1.

20           6.     Defendants have agreed to meet and confer with Plaintiffs regarding  
21 potential custodians and search terms for locating information responsive to this  
22 request, but only if the Court compels Defendants to engage in discovery.

23           **C.     Defendants' Contentions**

24           [TO COME FROM DEFENDANTS]

25           **XXVIII.    RFP NO. 6 TO DOJ:**

26           All DOCUMENTS and COMMUNICATIONS CONCERNING  
27 DEFENDANT'S policies, procedures, practices, forms, and trainings about  
28

1 IMMIGRATION DETAINEES requesting a new CUSTODY  
2 REDETERMINATION HEARING based on a material change in circumstances  
3 under 8 C.F.R. § 1003.19(e) in the Central District of California.

4 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 6 TO DOJ:**

5 Defendants object to RFP No. 6 as inappropriate in this case, which presents  
6 purely legal questions. Because this case presents legal issues, disposition on  
7 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
8 would benefit from discovery. Further, any decisions concerning discovery and its  
9 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
10 likely to provide substantial guidance in resolving (or eliminating) discovery and  
11 jurisdictional issues.

12 Further, subject to objections that apply to all RFPs and objections to any  
13 applicable definitions above, Defendants object to RFP No. 6 in that it seeks  
14 information that likely is protected under the attorney-client privilege, the attorney-  
15 work product protection, the deliberative process privilege, the law-enforcement  
16 sensitive protection, the law-enforcement privilege, and/or other government  
17 privileges.

18 Defendants also object to RFP No. 6 because it is vague. It is unclear what  
19 types of documents Plaintiffs are seeking in their request.

20 Defendants also object to RFP No. 6 as overbroad because it seeks  
21 information not relevant to the claims and defenses in this case. Any document or  
22 communication regarding Defendants' historical policies, procedures, practices,  
23 form, and trainings are not "of consequence in determining" Plaintiffs' claims that  
24 Defendants' current policies and practices have violated the constitutional rights of  
25 the class members by not requiring that ability to pay be considered in setting a  
26 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
27 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").



1 Defendants also object to RFP No. 6 as not relevant because documents or  
2 communications regarding Defendants' policies, procedures, practices, form, and  
3 trainings regarding requesting a new custody redetermination are not "of  
4 consequence in determining" Plaintiffs' claims that Defendants do not consider the  
5 failure to post bond to be a changed circumstance. *Id.* The process to request a  
6 hearing is not related to an immigration judge's potential holding at that hearing.

7 Defendants also object to RFP No. 6 because it seeks information which is not  
8 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
9 information that likely resides with a large number of individuals that are involved  
10 with policies, procedures, practices, forms, and trainings. It would take significant  
11 resources to collect, inspect, and produce any responsive information.

12 **DEFENDANTS' RESPONSE TO RFP NO. 6 TO DOJ:**

13 Pursuant to the above objections, no documents will be produced in response  
14 to this request.

15 **B. Plaintiffs' Contentions**

16 1. Plaintiffs' position regarding Defendants' contention that no discovery  
17 should take place in this case is addressed *supra* Section I.A.1.

18 2. Plaintiffs' position regarding Defendants' withholding of information  
19 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
20 Section IV.B.2.

21 3. Defendants have withdrawn their objection regarding vagueness.

22 4. Plaintiffs' position that information regarding Defendants' policies,  
23 procedures and general practices regarding custody determinations and other  
24 contexts where a person's ability to pay is considered are relevant to the parties'  
25 claims and defenses is addressed *supra* Section XXII.B.1.

1           5. Defendants have agreed to meet and confer with Plaintiffs regarding  
2 potential custodians and search terms for locating information responsive to this  
3 request, but only if the Court compels Defendants to engage in discovery.

4           **C. Defendants' Contentions**

5           [TO COME FROM DEFENDANTS]

6 **XXIX. RFP NO. 11 TO DHS:**

7           All DOCUMENTS and COMMUNICATIONS CONCERNING  
8 DEFENDANT'S policies, procedures, practices, forms, or trainings about custody  
9 determinations for individuals subject to FAMILY DETENTION.

10          **A. DEFENDANTS' OBJECTIONS TO RFP NO. 11 TO DHS:**

11          Defendants object to RFP No. 11 as inappropriate in this case, which presents  
12 purely legal questions. Because this case presents legal issues, disposition on  
13 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
14 would benefit from discovery. Further, any decisions concerning discovery and its  
15 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
16 likely to provide substantial guidance in resolving (or eliminating) discovery and  
17 jurisdictional issues.

18          Further, subject to objections that apply to all RFPs and objections to any  
19 applicable definitions above, Defendants object to RFP No. 11 in that it seeks  
20 information that likely is protected under attorney-client privilege, the attorney-work  
21 product protection, the deliberative process privilege, and/or law-enforcement  
22 sensitive protection.

23          Defendants also object to RFP No. 11 because it is vague. It is unclear what  
24 types of documents Plaintiffs are seeking in their request.

25          Defendants also object to RFP No. 11 as overbroad because it seeks  
26 information not relevant to the claims and defenses in this case. Any document or  
27 communication regarding Defendants' historical policies, procedures, practices,  
28

1 form, and trainings are not “of consequence in determining” Plaintiffs’ claims that  
2 Defendants’ current policies and practices have violated the constitutional rights of  
3 the class members by not requiring that ability to pay be considered in setting a  
4 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
5 changed circumstance. *See* Fed. R. Evid. 401 (defining “relevance”).

6 Defendants also object to RFP No. 11 because it seeks information which is  
7 not relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
8 information that likely resides with a large number of individuals that are involved  
9 with policies, procedures, practices, forms, and trainings. It would take significant  
10 resources to collect, inspect, and produce any responsive information.

11 Therefore, the burden and expense of the proposed discovery outweighs its  
12 likely benefit because this matter presents a constitutional challenge to Defendants’  
13 policies and practices in the Central District of California, and the parties do not  
14 contest the relevant facts regarding those policies and practices. In particular, the  
15 parties agree that immigration officials and immigration judges are not required  
16 under current policy to engage in a free-standing inquiry and consider a non-citizen’s  
17 financial circumstances in every single case, even where the non-citizen has not put  
18 his or her financial circumstances at issue, and that immigration officials and  
19 immigration judges are free to consider “ability to pay” when they, in their  
20 discretion, deem it relevant. Thus, information regarding Defendants’ policies,  
21 procedures, practices, forms, and trainings regarding custody determinations for  
22 individuals subject to family detention are not relevant in determining whether the  
23 Constitution requires consideration of “ability to pay” in every case.

24 Moreover, there are no family detention facilities in the Central District of  
25 California.

26 **DEFENDANTS’ RESPONSE TO RFP NO. 11 TO DHS:**

1 Pursuant to the above objections, no documents will be produced in response  
2 to this request.

3 **B. Plaintiffs' Contentions**

4 1. Plaintiffs' request seeks information concerning Defendants' policies,  
5 procedures and practices for custody determinations for women and children held in  
6 certain detention centers that house immigrant families. Defendants have a stated  
7 policy to consider such individuals' ability to pay a bond at custody determinations.  
8 *See* Pls.- Pets.' Not. of Mot. and Mot. for Class-Wide Prelim. Inj. and P & A at 7,  
9 *Hernandez v. Sessions III*, No. 5:16-00620-JGB-KK (C.D. Cal. May 19, 2016), ECF  
10 No. 45. This information is therefore plainly relevant to the parties' claims and  
11 defenses in this case, including Defendants' claims that Plaintiffs' requested relief is  
12 unworkable or unduly burdensome. Defendants' objections to the request have been  
13 previously addressed by Plaintiffs:

14 2. Plaintiffs' position regarding Defendants' contention that no discovery  
15 should take place in this case is addressed *supra* Section I.A.1.

16 3. Plaintiffs' position regarding Defendants' withholding of information  
17 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
18 Section IV.B.2.

19 4. Defendants have withdrawn their objection regarding vagueness.

20 5. Plaintiffs' position that information regarding Defendants' policies,  
21 procedures and general practices regarding custody determinations and other  
22 contexts where a person's ability to pay is considered are relevant to the parties'  
23 claims and defenses is addressed *supra* Section XXII.B.1.

24 6. Defendants have agreed to meet and confer with Plaintiffs regarding  
25 potential custodians and search terms for locating information responsive to this  
26 request, but only if the Court compels Defendants to engage in discovery.

27 **C. Defendants' Contentions**

1 [TO COME FROM DEFENDANTS]

2 **XXX. RFP NO. 12 TO DHS:**

3 All DOCUMENTS and COMMUNICATIONS CONCERNING the effect of  
4 Executive Order No. 13767, “Border Security and Immigration Enforcement  
5 Improvements,” 82 Fed. Reg. 8793 (Jan. 25, 2017), and Memorandum from  
6 Secretary of Homeland Security, “Implementing the President’s Border Security and  
7 Immigration Enforcement Improvements Policies” (Feb. 20, 2017), on CUSTODY  
8 DETERMINATIONS in the Central District of California.

9 **A. DEFENDANTS’ OBJECTIONS TO RFP NO. 12 TO DHS:**

10 Defendants object to RFP No. 12 as inappropriate in this case, which presents  
11 purely legal questions. Because this case presents legal issues, disposition on  
12 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
13 would benefit from discovery. Further, any decisions concerning discovery and its  
14 scope should be stayed pending the Ninth Circuit’s forthcoming decision, which is  
15 likely to provide substantial guidance in resolving (or eliminating) discovery and  
16 jurisdictional issues.

17 Further, subject to objections that apply to all RFPs and objections to any  
18 applicable definitions above, Defendants object to RFP No. 12 in that it seeks  
19 information that likely is protected under the attorney-client privilege, the attorney-  
20 work product protection, the deliberative process privilege, the law-enforcement  
21 sensitive protection, the law-enforcement privilege, and/or other government  
22 privileges.

23 Defendants also object to RFP No. 12 because it is vague. It is unclear what  
24 types of documents Plaintiffs are seeking in their request.

25 Defendants also object to RFP No. 12 in that it seeks information that is  
26 publicly available, which Defendants are not required to produce as there is a less  
27 burdensome manner for Plaintiffs to obtain these materials. Fed. R. Civ. P.

28

1 26(b)(2)(C)(i); *see*

2 [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Implementing-the-](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf)  
3 [Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf).

4 Defendants additionally object to RFP No. 12 as overbroad because it seeks  
5 information not relevant to the claims and defenses in this case. Executive Order No.  
6 13767 and the DHS Memorandum of February 20, 2017, relate to the  
7 implementation of border security and enforcement policies that are not “of  
8 consequence in determining” Plaintiffs’ claims that Defendants have violated the  
9 constitutional rights of the class members by not requiring that ability to pay be  
10 considered in setting a bond, by requiring a cash bond, and/or by not considering  
11 failure to post bond as a changed circumstance or any of the factors needed to  
12 establish the propriety of a permanent injunction. *See* Fed. R. Evid. 401 (defining  
13 “relevance”).

14 **DEFENDANTS’ RESPONSE TO RFP NO. 12 TO DHS:**

15 Pursuant to the above objections, no documents will be produced in response  
16 to this request.

17 **B. Plaintiffs’ Contentions**

18 1. Plaintiffs’ request seeks information concerning a recent Executive  
19 Order and DHS memorandum that addresses the Government’s policies and  
20 procedures for immigration detention. Plaintiffs seek information regarding whether  
21 and how the Order and Memorandum have affected Defendants’ custody  
22 determination policies, procedures and practices that are at issue in this case.

23 Defendants’ objections to the request have been previously addressed by Plaintiffs:

24 2. Plaintiffs’ position regarding Defendants’ contention that no discovery  
25 should take place in this case is addressed *supra* Section I.A.1.

26

27

28

3. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

4. Defendants have withdrawn their objection regarding vagueness.

5. Defendants have withdrawn their objection regarding equally accessible information.

6. Defendants have withdrawn their objection regarding relevance.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XXXI. RFP NO. 9 TO DOJ:**

All DOCUMENTS and COMMUNICATIONS CONCERNING the effect of Executive Order No. 13767, "Border Security and Immigration Enforcement Improvements," 82 Fed. Reg. 8793 (Jan. 25, 2017), and Memorandum from Secretary of Homeland Security, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), on CUSTODY REDETERMINATION HEARINGS in the Central District of California.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 9 TO DOJ:**

Defendants object to RFP No. 9 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to provide substantial guidance in resolving (or eliminating) discovery and jurisdictional issues.

Further, subject to objections that apply to all RFPs and objections to any applicable definitions above, Defendants object to RFP No. 9 in that it seeks information that likely is protected under the attorney-client privilege, the attorney-



1 work product protection, the deliberative process privilege, the law-enforcement  
2 sensitive protection, the law-enforcement privilege, and/or other government  
3 privileges.

4 Defendants also object to RFP No. 9 in that it seeks information that is  
5 publicly available, which Defendants are not required to produce as there is a less  
6 burdensome manner for Plaintiffs to obtain these materials. Fed. R. Civ. P.  
7 26(b)(2)(C)(i); *see*  
8 <https://www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocess>  
9 [ingpriorities.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2017/01/31/caseprocess).

10 Defendants additionally object to RFP No. 9 as overbroad because it seeks  
11 information not relevant to the claims and defenses in this case. Executive Order No.  
12 13767 and the DHS Memorandum of February 20, 2017, relate to the  
13 implementation of border security and enforcement policies that are not “of  
14 consequence in determining” Plaintiffs’ claims that Defendants have violated the  
15 constitutional rights of the class members, who are detained under 8 U.S.C. §  
16 1226(a), by not requiring that ability to pay be considered in setting a bond, by  
17 requiring a cash bond, and/or by not considering failure to post bond as a changed  
18 circumstance or any of the factors needed to establish the propriety of a permanent  
19 injunction. *See* Fed. R. Evid. 401 (defining “relevance”). Neither document discusses  
20 the conduct of custody redetermination hearing by an immigration judge.

21 **DEFENDANTS’ RESPONSE TO RFP NO. 9 TO DOJ:**

22 Pursuant to the above objections, no documents will be produced in response  
23 to this request.

24 **B. Plaintiffs’ Contentions**

25 1. Plaintiffs’ position regarding Defendants’ contention that no discovery  
26 should take place in this case is addressed *supra* Section I.A.1.

2. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

3. Defendants have withdrawn their objection regarding equally accessible information.

4. Defendants have withdrawn their objection regarding relevance.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XXXII. RFP NO. 3 TO DOJ:**

All DOCUMENTS and COMMUNICATIONS CONCERNING DEFENDANT'S policies, procedures, practices, forms, and trainings about CUSTODY REDETERMINATION HEARINGS in the Central District of California.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 3 TO DOJ:**

Defendants object to RFP No. 3 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to provide substantial guidance in resolving (or eliminating) discovery and jurisdictional issues.

Defendants, subject to objections that apply to all RFPs and objections to any applicable definitions above, further object to RFP No. 3 in that it seeks information that likely is protected under the attorney-client privilege, the attorney-work product protection, the deliberative process privilege, the law-enforcement sensitive protection, the law-enforcement privilege, and/or other government privileges.

1 Defendants also object to RFP No. 3 because it is vague. It is unclear what  
2 types of documents Plaintiffs are seeking in their request.

3 Defendants also object to RFP No. 3 as overbroad because it seeks  
4 information not relevant to the claims and defenses in this case. Any document or  
5 communication regarding Defendants' historical policies, procedures, practices,  
6 forms, and trainings are not "of consequence in determining" Plaintiffs' claims that  
7 Defendants' current policies and practices have violated the constitutional rights of  
8 the class members by not requiring that ability to pay be considered in setting a  
9 bond, by requiring a cash bond, and/or by not considering failure to post bond as a  
10 changed circumstance. *See* Fed. R. Evid. 401 (defining "relevance").

11 Defendants also object to RFP No. 3 because it seeks information which is not  
12 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
13 information that likely resides with a large number of individuals that are involved  
14 with policies, procedures, practices, forms, and trainings. It would take significant  
15 resources to collect, inspect, and produce any responsive information.

16 Therefore, the burden and expense of the proposed discovery outweighs its  
17 likely benefit because this matter presents a constitutional challenge to Defendants'  
18 policies and practices, and the parties do not contest the relevant facts regarding  
19 those policies and practices. In particular, the parties agree that immigration officials  
20 and immigration judges are not required under current policy to engage in a free-  
21 standing inquiry and consider a non-citizen's financial circumstances in every single  
22 case, even where the non-citizen has not put his or her financial circumstances at  
23 issue, and that immigration officials and immigration judges are free to consider  
24 "ability to pay" when they, in their discretion, deem it relevant. Thus, information  
25 regarding Defendants' policies, procedures, practices, forms, and trainings regarding  
26 custody redetermination hearings are not relevant in determining whether the  
27 Constitution requires consideration of "ability to pay" in every case.

28

1 **DEFENDANTS' RESPONSE TO RFP NO. 3 TO DOJ:**

2 Pursuant to the above objections, no documents will be produced in response  
3 to this request.

4 **B. Plaintiffs' Contentions**

5 1. Plaintiffs' request seeks information concerning Defendants' policies,  
6 procedures and practices for custody redetermination hearings (commonly referred to  
7 as bond hearings). Defendants' objections to this request seeking plainly relevant  
8 information have been previously addressed by Plaintiffs:

9 2. Plaintiffs' position regarding Defendants' contention that no discovery  
10 should take place in this case is addressed *supra* Section I.A.1.

11 3. Plaintiffs' position regarding Defendants' withholding of information  
12 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
13 Section IV.B.2.

14 4. Defendants have withdrawn their objection regarding vagueness.

15 5. Plaintiffs' position that information regarding Defendants' policies,  
16 procedures and general practices regarding custody determinations and other  
17 contexts where a person's ability to pay is considered are relevant to the parties'  
18 claims and defenses is addressed *supra* Section XXII.B.1.

19 6. Defendants have agreed to meet and confer with Plaintiffs regarding  
20 potential custodians and search terms for locating information responsive to this  
21 request, but only if the Court compels Defendants to engage in discovery.

22 **C. Defendants' Contentions**

23 [TO COME FROM DEFENDANTS]

24 **XXXIII. RFP NO. 4 TO DOJ:**

25 All DOCUMENTS and COMMUNICATIONS CONCERNING  
26 DEFENDANT'S policies and practices, both formal and informal, applied in the  
27 Central District of California during the Relevant Time Period, CONCERNING  
28

1 applications for fee waivers pursuant to 8 C.F.R. § 1003.24(d), including the  
2 procedures for determining whether an individual is unable to pay a fee, the  
3 standards applied to determine whether an individual is unable to pay, and the  
4 training that immigration judges and any PERSONS who assist them receive with  
5 respect to the adjudication of applications for fee waivers.

6 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 4 TO DOJ:**

7 Defendants object to RFP No. 4 as inappropriate in this case, which presents  
8 purely legal questions. Because this case presents legal issues, disposition on  
9 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
10 would benefit from discovery. Further, any decisions concerning discovery and its  
11 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
12 likely to provide substantial guidance in resolving (or eliminating) discovery and  
13 jurisdictional issues.

14 Further, subject to objections that apply to all RFPs and objections to any  
15 applicable definitions above, Defendants object to RFP No. 4 in that it seeks  
16 information that is publicly available, which Defendants are not required to produce  
17 as there is a less burdensome manner for Plaintiffs to obtain these materials. Fed. R.  
18 Civ. P. 26(b)(2)(C)(i); *see*  
19 <https://www.justice.gov/sites/default/files/eoir/legacy/2006/06/30/06-01.pdf>.

20 Defendants also object to RFP No. 4 in that it seeks information that likely is  
21 protected under the attorney-client privilege, the attorney-work product protection,  
22 the deliberative process privilege, the law-enforcement sensitive protection, the law-  
23 enforcement privilege, and/or other government privileges.

24 Defendants also object to RFP No. 4 because it is vague. It is unclear what  
25 types of documents Plaintiffs are seeking in their request.

26 Defendants also object to RFP No. 4 as overbroad because it seeks  
27 information not relevant to the claims and defenses in this case. Any document or  
28

1 communication regarding Defendants' historical policies and practices are not "of  
2 consequence in determining" Plaintiffs' claims that Defendants' current policies and  
3 practices have violated the constitutional rights of the class members by not  
4 requiring that ability to pay be considered in setting a bond, by requiring a cash  
5 bond, and/or by not considering failure to post bond as a changed circumstance. *See*  
6 Fed. R. Evid. 401 (defining "relevance").

7 Defendants also object to RFP No. 4 as overbroad because it seeks  
8 information not relevant to the claims and defenses in this case. Fees are imposed to  
9 offset court costs and therefore waiver of said fees should not impact the proceedings  
10 or the individual involved in the proceedings. Bonds, on the other hand, are  
11 specifically intended to influence an individual's behavior such that waiver would  
12 undermine their very purpose. Therefore, information regarding fee waivers is not  
13 "of consequence in determining" Plaintiffs' claims. *See* Fed. R. Evid. 401 (defining  
14 "relevance").

15 Defendants also object to RFP No. 4 because it seek information which is not  
16 relevant and is disproportionate to the needs of this case. Plaintiffs appear to seek  
17 information that likely resides with a large number of individuals that are involved  
18 with policies, procedures, practices, forms, and trainings. It would take significant  
19 resources to collect, inspect, and produce any responsive information.

20 Therefore, the burden and expense of the proposed discovery outweighs its  
21 likely benefit because this matter presents a constitutional challenge to Defendants'  
22 policies and practices, and the parties do not contest the relevant facts regarding  
23 those policies and practices. In particular, the parties agree that immigration officials  
24 and immigration judges are not required under current policy to engage in a free-  
25 standing inquiry and consider a non-citizen's financial circumstances in every single  
26 case, even where the non-citizen has not put his or her financial circumstances at  
27 issue, and that immigration officials and immigration judges are free to consider

1 “ability to pay” when they, in their discretion, deem it relevant. Thus, information  
2 regarding Defendants’ policies and practices regarding fee waivers for motions or  
3 applications for relief are not relevant in determining whether the Constitution  
4 requires consideration of “ability to pay” in every case.

5 **DEFENDANTS’ RESPONSE TO RFP NO. 4 TO DOJ:**

6 Pursuant to the above objections, no documents will be produced in response  
7 to this request.

8 **B. Plaintiffs’ Contentions**

9 1. Plaintiffs’ request seeks information concerning Defendants’ policies,  
10 procedures and practices regarding immigration judges’ consideration of fee waiver  
11 requests submitted by noncitizens in removal proceedings. Fee waivers require an  
12 immigration judge to collect information concerning a detainee’s ability to pay an  
13 application fee, and determine whether the fee should be waived due to the  
14 detainee’s inability to pay it. This information is relevant to the parties’ claims and  
15 defenses in this case, in particular Defendants’ claims that the relief that Plaintiffs  
16 seek is unworkable or unduly burdensome.

17 2. Plaintiffs’ position regarding Defendants’ contention that no discovery  
18 should take place in this case is addressed *supra* Section I.A.1.

19 3. Defendants have withdrawn their objection regarding equally accessible  
20 information.

21 4. Plaintiffs’ position regarding Defendants’ withholding of information  
22 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
23 Section IV.B.2.

24 5. Defendants have withdrawn their objection regarding vagueness.

25 6. Plaintiffs’ position that information regarding Defendants’ policies,  
26 procedures and general practices regarding custody determinations and other  
27



1 contexts where a person's ability to pay is considered are relevant to the parties'  
2 claims and defenses is addressed *supra* Section XXII.B.1.

3 7. Defendants have agreed to meet and confer with Plaintiffs regarding  
4 potential custodians and search terms for locating information responsive to this  
5 request, but only if the Court compels Defendants to engage in discovery.

6 **C. Defendants' Contentions**

7 [TO COME FROM DEFENDANTS]

8 **XXXIV. INTERROGATORY NO. 3<sup>6</sup> TO DHS:**

9 Identify all custody review procedures apart from CUSTODY  
10 DETERMINATIONS applied to IMMIGRATION DETAINEES to determine  
11 whether they can be released on bond or other conditions of supervision, including:  
12 the statute, regulation or other authority authorizing the custody review process; the  
13 PERSONS tasked with conducting the custody review; the standard applied to  
14 determine whether an IMMIGRATION DETAINEE may be released; and the  
15 conditions, including a monetary bond, on which an IMMIGRATION DETAINEE  
16 can be ordered released.

17 **A. RESPONSE TO INTERROGATORY NO. 3 TO DHS:**

18 Defendants object to Interrogatory No. 3 as premature, vague, overbroad and  
19 ambiguous with respect to its request to identify "all custody review procedures apart  
20 from CUSTODY DETERMINATIONS applied to IMMIGRATION DETAINEES to  
21 determine whether they can be released on bond or other conditions of supervision."  
22 The phrase "all custody review procedures" is undefined, and it is thus unclear what  
23 information Plaintiffs seek to obtain.

24  
25 \_\_\_\_\_  
26 <sup>6</sup> This interrogatory was inadvertently numbered as interrogatory 32, and was meant  
27 to be labelled as interrogatory 3. It will be referred to as Interrogatory 3 throughout  
28 this Joint Stipulation.

1 Defendants further object to Interrogatory No. 3 as also overly broad in scope,  
2 in that it seeks more than five years of training and guidance documents.

3 Defendants further object to the four subparts of Interrogatory No. 3 as  
4 constituting four separate and discrete interrogatories.

5 Defendants further object to Interrogatory No. 3 to the extent that Plaintiffs  
6 seek information protected from disclosure by the attorney-client privilege, work  
7 product doctrine, deliberative process privilege, law enforcement/investigatory files  
8 privilege, self-critical analysis privilege, and other applicable privileges. Defendants  
9 also object to the extent that Plaintiffs seek information protected from disclosure  
10 under the Privacy Act, 5 U.S.C. § 552a; DHS policy regarding the application of the  
11 Privacy Act to “visitors and aliens”; and other statutes, regulations, or directives  
12 regarding the protection of privacy, confidential information, or medical information,  
13 or under regulations preventing disclosure of specific alien information (such as, but  
14 not limited to: 8 U.S.C. §§ 1160(b)(5),(6); 1186a(c)(4); 1202(f); 1254a(c)(6);  
15 1255a(c)(4),(5); 1304(b); and 1367(a)(2),(b),(c),(d); 22 U.S.C. § 7105(c)(1)(C); 8  
16 C.F.R. §§ 208.6; 210.2(e); 214.11(e); 214.14(e); 216.5(e)(3)(iii); 236.6; 244.16;  
17 245a.2(t); 245a.3(n); 245a.21; 1003.46; and 1208.6), many of which would subject  
18 Defendants to civil or criminal penalties or other sanctions in the event of  
19 unauthorized disclosure.

20 Defendants further object to Interrogatory No. 3 to the extent the request calls  
21 for the disclosure of information already in Plaintiffs’ possession or which is readily  
22 available from a source that is equally accessible to Plaintiffs.

23 The lawsuit is a constitutional challenge to 8 U.S.C. § 1226(a) and (e). In such  
24 a challenge, the key legal issue is whether 8 U.S.C. § 1226(a) is constitutional, where  
25 it provides that consideration of ability to pay and alternatives to detention when  
26 setting an alien’s initial bond is a discretionary determination; does not require that  
27 an alien who is determined to present a flight risk have an initial bond set below the  
28

1 \$1,500 statutory minimum; and does not require consideration of alternatives to a  
2 full cash bond, or alternatives to detention when setting an initial bond for an alien  
3 who is determined to present a flight risk.

4 The controlling precedents of the U.S. Supreme Court, the U.S. Court of  
5 Appeals for the Ninth Circuit, Board of Immigration Appeals (“BIA”), and  
6 congressionally-enacted statutes do not require consideration of ability to pay and  
7 alternatives to detention when setting an alien’s initial bond. Moreover, aliens  
8 detained under 8 U.S.C. § 1226(a) who are determined to be a flight risk are not  
9 entitled to have a bond set below the \$1,500 statutory minimum, alternatives to a full  
10 cash bond, or alternatives to detention. *See, e.g., Prieto-Romero v. Clark*, 534 F.3d  
11 1053, 1067 (9th Cir. 2008). It is well-settled there is no constitutional right to release  
12 on bond while removal proceedings are pending and, except for unusual  
13 circumstances, an alien only has rights afforded by Congress. *See generally Carlson*  
14 *v. Landon*, 342 U.S. 524, 538 (1952).

15 The statute is clear. Congress committed to ICE officials and immigration  
16 judges the unreviewable discretion to continue to detain an alien during removal  
17 proceedings, to release an alien on bond and conditions, or to conditionally parole  
18 aliens detained under 8 U.S.C. § 1226(a). *See* 8 U.S.C. §§ 1226(a) and (e);  
19 1252(a)(2)(B) and (f)(1). 8 U.S.C. § 1226(a) and (e) provide that consideration of  
20 ability to pay and alternatives to detention when setting an alien’s initial bond is a  
21 discretionary determination that is not subject to judicial review. At their initial bond  
22 redetermination hearings, Plaintiffs were provided a reasonable opportunity to  
23 present evidence, witnesses, and testimony to meet their burden of demonstrating  
24 their eligibility for release. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).  
25 Therefore, because Plaintiffs cannot demonstrate that their bond hearings were “so  
26 fundamentally unfair that the alien was prevented from reasonably presenting his  
27 case,” there is no violation of a constitutional right. *See Platero–Cortez v. INS*, 804

1 F.2d 1127, 1132 (9th Cir. 1986) (quoting *Lopez v. INS*, 775 F.2d 1015, 1017 (9th Cir.  
2 1985)); *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-  
3 44 (1984) (holding that courts should uphold an agency's interpretation of a statute it  
4 administers if it is based on a reasonable construction of the statute).

5 A plain reading of the statute at issue here and judicial precedent forecloses  
6 discovery in this case. Discovery will not shed further light on this issue because, as  
7 the Ninth Circuit itself has found, the discretion comes from the statute itself.  
8 Because this case presents a legal challenge, there are no genuine issues of fact in  
9 dispute that would benefit from discovery.

10 Defendants object to Interrogatory No. 3 as disproportionate to the needs of  
11 the case considering the negligible potential importance of the discovery in resolving  
12 the issues, and whether the burden or expense of the proposed discovery outweighs  
13 its likely benefit. Because this case presents legal questions, disposition on summary  
14 judgment is appropriate.

15 **B. Plaintiffs' Contentions**

16 1. Plaintiffs' request seeks information concerning Defendants' policies,  
17 procedures and practices for certain custody procedures apart from the procedures at  
18 issue in this case (custody determinations and custody redetermination hearings  
19 conducted under Section 1226(a)). Defendants employ different custody procedures  
20 for noncitizens detained under color of other detention statutes, including "parole"  
21 (Section 1225) and "Post-Order Custody Reviews" (Section 1231). Plaintiffs seek  
22 information about these procedures to determine whether and how Defendants  
23 consider detainees' ability to pay and the availability of non-monetary conditions of  
24 release in these other contexts. Defendants' objections to this request for plainly  
25 relevant information have been previously addressed by Plaintiffs:

26 2. Defendants have withdrawn their vagueness objection.  
27  
28

3. Plaintiffs' position regarding the Relevant Time Period is addressed *supra* Section III.A.1.

4. Defendants have withdrawn their objection regarding subparts.

5. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

6. Defendants have withdrawn their objection regarding equally accessible information.

7. Plaintiffs' position regarding Defendants' contention that no discovery should take place in this case is addressed *supra* Section I.A.1.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**REQUESTS REGARDING THE COST OF DEFENDANTS' CURRENT  
POLICIES AND PROCEDURES AND PLAINTIFFS' REQUESTED  
CHANGES TO THOSE POLICIES AND PROCEDURES**

**XXXV. RFP NO. 8 TO DOJ:**

All DOCUMENTS and COMMUNICATIONS CONCERNING the cost of providing CUSTODY REDETERMINATION HEARINGS in the Central District of California during the Relevant Time Period.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 8 TO DOJ:**

Defendants object to RFP No. 8 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to provide substantial guidance in resolving (or eliminating) discovery and jurisdictional issues.

1 Further, subject to objections that apply to all RFPs and objections to any  
2 applicable definitions above, Defendants object to RFP No. 8 in that it seeks  
3 information that likely is protected under the attorney-client privilege, the attorney-  
4 work product protection, the deliberative process privilege the law-enforcement  
5 sensitive protection, the law-enforcement privilege, and/or other government  
6 privileges.

7 Defendants also object to RFP No. 8 because it is vague. It is unclear what  
8 types of documents Plaintiffs are seeking in their request.

9 Defendants also object to RFP No. 8 in that it seeks any responsive documents  
10 beginning in January 1, 2012. This case involves claims regarding whether  
11 Defendants current policies and procedures violate Plaintiffs constitutional rights.  
12 Therefore, at most, the relevant time period began with the filing of this lawsuit on  
13 April 6, 2016.

14 Defendants also object to RFP No. 8 because it seeks information which is not  
15 relevant and is disproportionate to the needs of this case. The information sought  
16 requires significant processing to compile and will need to be processed manually,  
17 likely at great cost and with significant workforce resources. The burden and expense  
18 of the proposed discovery outweighs its likely benefit because this matter presents a  
19 constitutional challenge to Defendants' policies and practices, and the parties do not  
20 contest the relevant facts regarding those policies and practices. In particular, the  
21 parties agree that immigration officials and immigration judges are not required  
22 under current policy to engage in a freestanding inquiry and consider a non-citizen's  
23 financial circumstances in every single case, even where the non-citizen has not put  
24 his or her financial circumstances at issue, and that immigration officials and  
25 immigration judges are free to consider "ability to pay" when they, in their  
26 discretion, deem it relevant. Information regarding the costs of providing custody  
27 redetermination hearings, if it exists, is not relevant in determining whether the

1 Constitution requires consideration of “ability to pay” in every case, and thus  
2 production of this information is disproportionate to the needs of this case.

3 **DEFENDANTS’ RESPONSE TO RFP NO. 8 TO DOJ:**

4 Pursuant to the above objections, no documents will be produced in response  
5 to this request.

6 **B. Plaintiffs’ Contentions**

7 1. The Costs of Detention and Custody Determinations are Relevant  
8 to the Parties’ Claims and Defenses.

9 Discovery concerning the costs of detention and custody determinations is  
10 relevant to this case in a number of ways. To begin, Defendants have repeatedly put  
11 questions concerning cost and burdens at issue by raising it as a defense to Plaintiffs’  
12 request for injunctive relief. Throughout the litigation, Defendants have asserted that  
13 Plaintiffs’ requested injunctive relief is overly burdensome and threatens to  
14 “upend[ ]” the proper functioning of the immigration system, *see, e.g.*, Ninth Circuit  
15 Stay Motion at 1-2, *Hernandez v. Lynch*, No. 16-56829 (9th Cir. Dec. 30, 2016),  
16 ECF No. 5-1, that it will “hurt[] the public interest by unnecessarily lengthening the  
17 bond-setting hearing process and increasing the associated costs,” Opening Br. of  
18 Defs.- Appellants at 15-16, *Hernandez v. Lynch*, No. 16-56829 (9th Cir. Feb. 1,  
19 2017), ECF No. 13, that it will require immigration judges to conduct “mini-trials  
20 into the financial ability” of class members to pay bond, *id.* at 44. Plaintiffs dispute  
21 all of these assertions, but cannot prove their claims without obtaining discovery  
22 concerning, *inter alia*, the costs of operating Defendants’ existing practices, and the  
23 financial costs that their requested relief would require.

24 Indeed, Defendants have relied on their own evidence to support their claims  
25 of burden. They have proffered a declaration from an ICE officer, Norma Bonales-  
26 Garibay, who testified concerning the burden the preliminary injunction would  
27 impose, as well as the numbers of noncitizens leaving detention in the absence of  
28



1 Plaintiffs' requested procedures. *See* Emergency Mot. Under Rule 27-3 for Stay of  
2 Inj. & Proceedings Pending Appeal, *Hernandez v. Lynch*, No. 16-56829 (9th Cir.  
3 Dec. 30, 2016), ECF No. 5-4; Ex. C, Decl. of Norma Bonales-Garibay, ECF No. 5-4  
4 ¶ 5. Plaintiffs should have the opportunity to test this declaration, as well as probe  
5 the other bases of Defendants' insistence that the requested procedures are  
6 unreasonable.

7       Also critical to this inquiry is the costs of keeping noncitizens in detention,  
8 both in terms of the resources the Government expends on their incarceration, as  
9 well as the human costs and harm to the class members. In Plaintiffs' view, it is  
10 likely that releasing class members—all of whom have been found by Immigration  
11 Judges not to present flight risk or danger concerns that justify their detention—  
12 would save Defendants resources, rather than consume them. The costs of operating  
13 alternative to detention programs, like ISAP, are also highly relevant to the issue of  
14 conservation of resources.

15                   2.     Plaintiffs' Position on Remaining Objections.

16           1.     Plaintiffs' position regarding Defendants' contention that no discovery  
17 should take place in this case is addressed *supra* Section I.A.1.

18           2.     Plaintiffs' position regarding Defendants' withholding of information  
19 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
20 Section IV.B.2.

21           3.     Defendants have withdrawn their objection regarding vagueness.

22           4.     Plaintiffs' position regarding the Relevant Time Period is addressed  
23 *supra* Section III.A.1.

24           5.     Plaintiffs clarified that they are seeking analysis that already exists, and  
25 therefore are not asking Defendants to generate the requested information.

26                   C.     Defendants' Contentions

27           [TO COME FROM DEFENDANTS]

28

1 **XXXVI. RFP NO. 13 TO DHS:**

2 All DOCUMENTS and COMMUNICATIONS CONCERNING the cost of  
3 detaining IMMIGRATION DETAINEES held on a bond set by an ICE officer or an  
4 immigration judge pursuant to Title 8 U.S.C. § 1226(a) during the Relevant Time  
5 Period, including but not limited to, the costs of housing, security, food,  
6 medical/dental care, and transportation.

7 **A. DEFENDANTS' OBJECTIONS TO RFP NO. 13 TO DHS:**

8 Defendants object to RFP No. 13 as inappropriate in this case, which presents  
9 purely legal questions. Because this case presents legal issues, disposition on  
10 summary judgment is appropriate; there are no genuine issues of fact in dispute that  
11 would benefit from discovery. Further, any decisions concerning discovery and its  
12 scope should be stayed pending the Ninth Circuit's forthcoming decision, which is  
13 likely to provide substantial guidance in resolving (or eliminating) discovery and  
14 jurisdictional issues.

15 Further, subject to objections that apply to all RFPs and objections to any  
16 applicable definitions above, Defendants object to RFP No. 13 in that it seeks  
17 information that likely is protected under the attorney-client privilege, the attorney-  
18 work product protection, the deliberative process privilege, the law-enforcement  
19 sensitive protection, the law-enforcement privilege, and/or other government  
20 privileges.

21 Defendants also object to RFP No. 13 because it is vague. It is unclear what  
22 types of documents Plaintiffs are seeking in their request.

23 Defendants also object to RFP No. 13 because it is unduly burdensome and  
24 disproportionate to the needs of the case. The information sought requires significant  
25 processing to compile and will need to be processed manually, likely at great cost  
26 and with significant workforce resources. Any data maintained by DHS regarding  
27 cost of detention is not categorized by the detention authority under which the

28

1 individual is detained. The burden and expense of the proposed discovery outweighs  
2 its likely benefit because this matter presents a constitutional challenge to  
3 Defendants' policies and practices, and the parties do not contest the relevant facts  
4 regarding those policies and practices. In particular, the parties agree that  
5 immigration officials and immigration judges are not required under current policy to  
6 engage in a free-standing inquiry and consider a non-citizen's financial  
7 circumstances in every single case, even where the non-citizen has not put his or her  
8 financial circumstances at issue, and that immigration officials and immigration  
9 judges are free to consider "ability to pay" when they, in their discretion, deem it  
10 relevant. Information regarding costs of detaining aliens are not relevant in  
11 determining whether the Constitution requires consideration of "ability to pay" in  
12 every case, and thus production of this information is disproportionate to the needs  
13 of this case.

14 **DEFENDANTS' RESPONSE TO RFP NO. 13 TO DHS:**

15 Pursuant to the above objections, no documents will be produced in response  
16 to this request.

17 **B. Plaintiffs' Contentions**

18 1. Plaintiffs' position regarding Defendants' contention that no discovery  
19 should take place in this case is addressed *supra* Section I.A.1.

20 2. Plaintiffs' position regarding Defendants' withholding of information  
21 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
22 Section IV.B.2.

23 3. Defendants have withdrawn their objection regarding vagueness.

24 4. Plaintiffs' position regarding the relevance of the costs of detention and  
25 custody determinations is addressed *supra* Section XXXV.B.1.

26 5. Plaintiffs clarified that they are seeking analysis that already exists, and  
27 therefore are not asking Defendants to generate the requested information.

28

**3 XXXVII. RFP NO. 14 TO DHS:**

**7 | A. DEFENDANTS' OBJECTIONS TO RFP NO. 14 TO DHS:**

Further, subject to objections that apply to all RFPs and objections to any applicable definitions above, Defendants object to RFP No. 14 in that it seeks information that likely is protected under the attorney-client privilege, the attorney-work product protection, the deliberative process privilege the law-enforcement sensitive protection, the law-enforcement privilege, and/or other government privileges.

Defendants also object to RFP No. 14 as not relevant. The cost of conducting custody determination for all immigrant detainees is “of consequence in determining” whether Plaintiffs’ constitutional rights have been infringed.

1 information sought requires significant processing to compile and will need to be  
2 processed manually, likely at great cost and with significant workforce resources.  
3 The burden and expense of the proposed discovery outweighs its likely benefit  
4 because this matter presents a constitutional challenge to Defendants' policies and  
5 practices, and the parties do not contest the relevant facts regarding those policies  
6 and practices. In particular, the parties agree that immigration officials and  
7 immigration judges are not required under current policy to engage in a freestanding  
8 inquiry and consider a non-citizen's financial circumstances in every single case,  
9 even where the non-citizen has not put his or her financial circumstances at issue,  
10 and that immigration officials and immigration judges are free to consider "ability to  
11 pay" when they, in their discretion, deem it relevant. Information regarding costs of  
12 conducting custody determinations are not relevant in determining whether the  
13 Constitution requires consideration of "ability to pay" in every case, and thus  
14 production of this information is disproportionate to the needs of this case.

15 **DEFENDANTS' RESPONSE TO RFP NO. 14 TO DHS:**

16 Pursuant to the above objections, no documents will be produced in response  
17 to this request.

18 **B. Plaintiffs' Contentions**

- 19 1. Plaintiffs' position regarding Defendants' contention that no discovery  
20 should take place in this case is addressed *supra* Section I.A.1.
- 21 2. Plaintiffs' position regarding Defendants' withholding of information  
22 based on hypothetical assertions of privilege and confidentiality is addressed *supra*  
23 Section IV.B.2.
- 24 3. Defendants have withdrawn their objection regarding vagueness.
- 25 4. Plaintiffs' position regarding the relevance of the costs of detention and  
26 custody determinations is addressed *supra* Section XXXV.B.1.

### 3 C. Defendants' Contentions

**4** [TO COME FROM DEFENDANTS]

**5 XXXVIII. RFP NO. 15 TO DHS:**

6 All DOCUMENTS and COMMUNICATIONS CONCERNING the cost of  
7 supervising IMMIGRATION DETAINEES released from detention on  
8 ALTERNATIVE CONDITIONS OF RELEASE pursuant to 8 U.S.C. § 1226(a),  
9 including ISAP or any other ICE Alternatives to Detention program, during the  
10 Relevant Time Period.

**A. DEFENDANTS' OBJECTIONS TO RFP NO. 15 TO DHS:**

Defendants object to RFP No. 15 as inappropriate in this case, which presents purely legal questions. Because this case presents legal issues, disposition on summary judgment is appropriate; there are no genuine issues of fact in dispute that would benefit from discovery. Further, any decisions concerning discovery and its scope should be stayed pending the Ninth Circuit's forthcoming decision, which is likely to provide substantial guidance in resolving (or eliminating) discovery and jurisdictional issues.

Further, subject to objections that apply to all RFPs and objections to any applicable definitions above, Defendants object to RFP No. 15 in that it seeks information that likely is protected under the attorney-client privilege, the attorney-work product protection, the deliberative process privilege, the law-enforcement sensitive protection, the law-enforcement privilege, and/or other government privileges.

Defendants also object to RFP No. 15 because it is vague. It is unclear what types of documents Plaintiffs are seeking in their request.

## 27

---

28 112  
JOINT STIPULATION REGARDING PLAINTIFFS' MOTION TO COMPEL  
PURSUANT TO LOCAL RULE 37-2.1

1 Defendants also object to RFP No. 15 because it is unduly burdensome and  
2 disproportionate to the needs of the case. The information sought requires significant  
3 processing to compile and will need to be processed manually, likely at great cost  
4 and with significant workforce resources. Any data maintained by DHS regarding  
5 the cost of supervising immigration detainees released from detention on alternative  
6 conditions of release is not categorized by the initial detention authority under which  
7 the individual was detained. The burden and expense of the proposed discovery  
8 outweighs its likely benefit because this matter presents a constitutional challenge to  
9 Defendants' policies and practices, and the parties do not contest the relevant facts  
10 regarding those policies and practices. In particular, the parties agree that  
11 immigration officials and immigration judges are not required under current policy to  
12 engage in a free-standing inquiry and consider a non-citizen's financial  
13 circumstances in every single case, even where the non-citizen has not put his or her  
14 financial circumstances at issue, and that immigration officials and immigration  
15 judges are free to consider "ability to pay" when they, in their discretion, deem it  
16 relevant. Information regarding costs of utilizing alternative conditions of release are  
17 not relevant in determining whether the Constitution requires consideration of  
18 "ability to pay" in every case, and thus production of this information is  
19 disproportionate to the needs of this case.

20 **DEFENDANTS' RESPONSE TO RFP NO. 15 TO DHS:**

21 Pursuant to the above objections, no documents will be produced in response  
22 to this request.

23 **B. Plaintiffs' Contentions**

24 1. Plaintiffs' position regarding Defendants' contention that no discovery  
25 should take place in this case is addressed *supra* Section I.A.1.



2. Plaintiffs' position regarding Defendants' withholding of information based on hypothetical assertions of privilege and confidentiality is addressed *supra* Section IV.B.2.

3. Defendants have withdrawn their objection regarding vagueness.

4. Plaintiffs' position regarding the relevance of the costs of detention and custody determinations is addressed *supra* Section XXXV.B.1.

5. Plaintiffs clarified that they are seeking analysis that already exists, and therefore are not asking Defendants to generate the requested information.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**XXXIX. INTERROGATORY NO. 4 TO DHS:**

State the average cost per IMMIGRATION DETAINEE and total aggregate cost to DEFENDANT of detaining all IMMIGRATION DETAINEES who were detained under 8 U.S.C. § 1226(a) on a bond set by an ICE officer or an immigration judge during the Relevant Time Period, including but not limited to, the costs of housing, security, food, medical/dental care, and transportation

**A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO DHS:**

Defendants object to Interrogatory No. 4 as irrelevant, premature, vague, overbroad and ambiguous with respect to its request to identify the "the average cost per IMMIGRATION DETAINEE" and "total aggregate cost to DEFENDANT of detaining all IMMIGRATION DETAINEES." The term "total aggregate cost" is undefined, and it is thus unclear the extent of the information Plaintiffs seek to obtain.

Defendants further object to Interrogatory No. 4 as overbroad as to time, and that identifying the costs is unduly burdensome and disproportionate to the needs of the case.

1 Defendants object to Interrogatory No. 4 as unduly burdensome. Defendants  
2 have not identified the “total aggregate cost to DEFENDANT of detaining all  
3 IMMIGRATION DETAINEES who were detained under 8 U.S.C. § 1226(a) on a  
4 bond set by an ICE officer or an immigration judge during the Relevant Time  
5 Period,” as the information is not readily available given the manner in which DHS  
6 databases are configured. Any data maintained by DHS regarding cost of detention is  
7 not categorized by the detention authority under which the individual is detained.  
8 Therefore, the requested information will need to be processed manually, likely at  
9 great cost and with a significant workforce effort. The burden and expense of the  
10 proposed discovery outweighs its likely benefit because this matter presents a  
11 constitutional challenge to Defendants’ policies and practices, and the parties do not  
12 contest the relevant facts regarding those policies and practices. In particular, the  
13 parties agree that immigration officials and immigration judges are not required  
14 under current policy to engage in a freestanding inquiry and consider a non-citizen’s  
15 financial circumstances in every single case, even where the non-citizen has not put  
16 his or her financial circumstances at issue, and that immigration officials and  
17 immigration judges are free to consider “ability to pay” when they, in their  
18 discretion, deem it relevant.

19 Defendants further object to Interrogatory No. 4 on relevance grounds. The  
20 average and aggregate costs to Defendants of detaining immigration detainees is not  
21 relevant to whether an alien presents a flight risk that requires detention, with or  
22 without bond. Information regarding costs of detaining aliens is not relevant in  
23 determining whether the Constitution requires consideration of “ability to pay” in  
24 every case, and thus production of this information is disproportionate to the needs  
25 of this case. Because this case presents legal questions, disposition on summary  
26 judgment is appropriate.

27 **B. Plaintiffs’ Contentions**

1 1. Defendants have withdrawn their objection regarding vagueness.

2 2. Plaintiffs' position regarding the Relevant Time Period is addressed  
3 *supra* Section III.A.1.

4 3. Plaintiffs' position regarding the relevance of the costs of detention and  
5 custody determinations is addressed *supra* Section XXXV.B.1.

6 4. Plaintiffs' position regarding Defendants' contention that no discovery  
7 should take place in this case is addressed *supra* Section I.A.1.

8 **C. Defendants' Contentions**

9 [TO COME FROM DEFENDANTS]

10 **XL. INTERROGATORY NO. 5 TO DHS:**

11 State the average cost per IMMIGRATION DETAINEE to DEFENDANT of  
12 conducting a CUSTODY DETERMINATION for an IMMIGRATION DETAINEE  
13 who is detained under 8 U.S.C. § 1226(a).

14 **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 5 TO**  
15 **DHS:**

16 Defendants object to Interrogatory No. 5 as premature, unduly burdensome,  
17 irrelevant, overbroad as to time, and disproportionate to the needs of the case.

18 Defendants object to the extent the requested information is not separately  
19 captured or categorized in this manner in DHS databases. To the extent this  
20 information exists, the information sought requires significant processing to compile  
21 and will need to be processed manually, likely at great cost and with significant  
22 workforce resources. The burden and expense of the proposed discovery outweighs  
23 its likely benefit because this matter presents a constitutional challenge to  
24 Defendants' policies and practices, and the parties do not contest the relevant facts  
25 regarding those policies and practices. In particular, the parties agree that  
26 immigration officials and immigration judges are not required under current policy to  
27 engage in a free-standing inquiry and consider a non-citizen's financial  
28 circumstances in every single case, even where the non-citizen has not put his or her

1 financial circumstances at issue, and that immigration officials and immigration  
2 judges are free to consider “ability to pay” when they, in their discretion, deem it  
3 relevant.

4 Defendants further object to Interrogatory No. 5 on relevance grounds.  
5 Information regarding the cost of conducting custody determinations is not relevant  
6 in determining whether the Constitution requires consideration of “ability to pay” in  
7 every case, and thus production of this information is disproportionate to the needs  
8 of this case. Because this case presents legal questions, disposition on summary  
9 judgment is appropriate.

10 **B. Plaintiffs’ Contentions**

11 1. Plaintiffs’ position regarding the relevance of the costs of detention and  
12 custody determinations is addressed *supra* Section XXXV.B.1.

13 2. Plaintiffs’ position regarding Defendants’ contention that no discovery  
14 should take place in this case is addressed *supra* Section I.A.1.

15 **C. Defendants’ Contentions**

16 [TO COME FROM DEFENDANTS]

17 **XLI. INTERROGATORY NO. 6 TO DHS:**

18 State the average cost per IMMIGRATION DETAINEE and total aggregate  
19 cost to DEFENDANT of supervising all IMMIGRATION DETAINEES released  
20 pursuant to 8 U.S.C. § 1226(a) through ALTERNATIVE CONDITIONS OF  
21 RELEASE during the Relevant Time Period.

22 **A. DEFENDANTS’ RESPONSE TO INTERROGATORY NO. 6 TO**  
23 **DHS:**

24 Defendants object to Interrogatory No. 6 as premature, unduly burdensome,  
25 irrelevant, overbroad as to time, and disproportionate to the needs of the case.

26 Defendants object to Interrogatory No. 6 because it is unduly burdensome and  
27 disproportionate to the needs of the case. The information sought requires significant  
28 processing to compile and will need to be processed manually, likely at great cost

1 and with significant workforce resources. Any data maintained by DHS regarding  
2 the cost of supervising immigration detainees released from detention on alternative  
3 conditions of release is not categorized by the initial detention authority under which  
4 the individual was detained. The burden and expense of the proposed discovery  
5 outweighs its likely benefit because this matter presents a constitutional challenge to  
6 Defendants' policies and practices, and the parties do not contest the relevant facts  
7 regarding those policies and practices. In particular, the parties agree that  
8 immigration officials and immigration judges are not required under current policy to  
9 engage in a free-standing inquiry and consider a non-citizen's financial  
10 circumstances in every single case, even where the non-citizen has not put his or her  
11 financial circumstances at issue, and that immigration officials and immigration  
12 judges are free to consider "ability to pay" when they, in their discretion, deem it  
13 relevant.

14 Defendants further object to Interrogatory No. 6 on relevance grounds.  
15 Information regarding costs of detaining aliens or supervising released aliens is not  
16 relevant in determining whether the Constitution requires consideration of "ability to  
17 pay" in every case, and thus production of this information is disproportionate to the  
18 needs of this case. Because this case presents legal questions, disposition on  
19 summary judgment is appropriate.

20 **B. Plaintiffs' Contentions**

21 1. Plaintiffs' position regarding the relevance of the costs of detention and  
22 custody determinations is addressed *supra* Section XXXV.B.1.

23 2. Plaintiffs' position regarding Defendants' contention that no discovery  
24 should take place in this case is addressed *supra* Section I.A.1.

25 **C. Defendants' Contentions**

26 [TO COME FROM DEFENDANTS]

27 **XLII. INTERROGATORY NO. 7 TO DHS:**

1 State the number of UNITS OF DETENTION BED SPACE used by  
2 DEFENDANT per year to detain IMMIGRANT DETAINEES who were detained  
3 under 8 U.S.C. § 1226(a) on a bond set by an ICE officer or an immigration judge  
4 during the Relevant Time Period.

5 A. **DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO**  
6 **DHS:**

7 Defendants object to Interrogatory No. 7 as premature, unduly burdensome,  
8 irrelevant, overbroad as to time, and disproportionate to the needs of the case.

9 Defendants object to the extent the requested information is not readily  
10 available given the manner in which DHS databases are configured. Units of  
11 detention space for individuals detained under 8 U.S.C. § 1226(a) are not captured in  
12 the relevant databases. Therefore, the requested information will need to be  
13 processed manually, likely at great cost and with a significant workforce effort.

14 The burden and expense of the proposed discovery outweighs its likely benefit  
15 because this matter presents a constitutional challenge to Defendants' policies and  
16 practices, and the parties do not contest the relevant facts regarding those policies  
17 and practices. In particular, the parties agree that immigration officials and  
18 immigration judges are not required under current policy to engage in a freestanding  
19 inquiry and consider a non-citizen's financial circumstances in every single case,  
20 even where the non-citizen has not put his or her financial circumstances at issue,  
21 and that immigration officials and immigration judges are free to consider "ability to  
22 pay" when they, in their discretion, deem it relevant.

23 Defendants further object to Interrogatory No. 7 on relevance grounds.  
24 Information regarding costs of detaining aliens or the number of beds used is not  
25 relevant in determining whether the Constitution requires consideration of "ability to  
26 pay" in every case, and thus production of this information is disproportionate to the  
27

needs of this case. Because this case presents legal questions, disposition on summary judgment is appropriate.

**B. Plaintiffs' Contentions**

1. Plaintiffs' position regarding the relevance of the costs of detention and custody determinations is addressed *supra* Section XXXV.B.1.

2. Plaintiffs' position regarding Defendants' contention that no discovery should take place in this case is addressed *supra* Section I.A.1.

**C. Defendants' Contentions**

[TO COME FROM DEFENDANTS]

**REQUESTS REGARDING DETAINEES "FAILURE TO APPEAR" RATE**

**XLIII. INTERROGATORY NO. 8 TO DHS:**

Identify any reports or statistics CONCERNING the failure to appear rate for IMMIGRATION DETAINEES detained under 8 U.S.C. § 1226(a), who were released on IMMIGRATION BONDS and/or ALTERNATIVE CONDITIONS OF RELEASE pursuant to a CUSTODY DETERMINATION or CUSTODY REDETERMINATION HEARING, during the Relevant Time Period. DEFENDANT shall specify whether an IMMIGRATION DETAINEE did not appear for subsequent immigration court appearances, otherwise violated the terms of their release, or did not appear for removal if ordered to do so.

**A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 8 TO DHS:**

Defendants object to Interrogatory No. 8 as premature, unduly burdensome, irrelevant, overbroad as to time, and disproportionate to the needs of the case.

Defendants object to Interrogatory No. 8 as unduly burdensome to the extent it requests that the agency prepare such reports or statistics, and is disproportionate to the needs of the case. Defendants object to the extent the requested information is not readily available given the manner in which DHS databases are configured. Failure to appear rates for individuals released pursuant to 8 U.S.C. § 1226(a) are not



1 captured in the relevant databases. Therefore, the requested information will need to  
2 be processed manually, likely at great cost and with a significant workforce effort.  
3 Moreover, information related to detainees who do not appear for subsequent  
4 immigration court appearances would be maintained by EOIR, not ICE.

5 Defendants further object to Interrogatory No. 8 on relevance grounds.  
6 Reports or statistics concerning the failure to appear rate for immigration detainees  
7 detained under 8 U.S.C. § 1226(a), who were released on immigration bonds and/or  
8 alternative conditions of release, are not relevant in determining the legal issues to be  
9 resolved in Plaintiffs' lawsuit.

10 Defendants object to Interrogatory No. 8 as disproportionate to the needs of  
11 the case considering the negligible potential importance of the discovery in resolving  
12 the issues, and whether the burden or expense of the proposed discovery outweighs  
13 its likely benefit. Because this case presents legal questions, disposition on summary  
14 judgment is appropriate.

15 **B. Plaintiffs' Contentions**

- 16 1. Information Regarding the Government's Statistics on Class  
17 Members' "Failure to Appear" Rates is Relevant to Whether the  
18 Immigration Judge Must Consider Alternatives to Detention in  
Making the Custody Determination.

19 Information about noncitizens' "failure to appear" rates is plainly relevant to  
20 the parties' claims and defenses in this case. Most clearly, Defendants themselves  
21 have relied on this information as a defense in its Ninth Circuit opening brief. *See*  
22 *Opening Brief of Defendants-Appellants 37* (citing *Executive Office for Immigration*  
23 *Review, FY 2015 Statistical Yearbook* at P3,  
24 [https://www.justice.gov/sites/default/files/pages/attachments/2016/04/08/](https://www.justice.gov/sites/default/files/pages/attachments/2016/04/08/fy15syb.pdf)  
25 [fy15syb.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2016/04/08/fy15syb.pdf)). There, the Government contended that 41 percent of noncitizens  
26 released on bond or other conditions fail to appear for their immigration court  
27 hearings, and that this information "shows that the implementation of the district  
28

1 court's injunction would actually thwart Congress's considered judgment." *Id.* at 37.<sup>7</sup>  
2 Plaintiffs are unquestionably entitled to discovery into statistics and reports on which  
3 Defendants have relied as a defense in this case.

4       Setting aside the Government's decision to put failure to appear rates at issue,  
5 the frequency of noncitizens' failure to appear is relevant to the constitutionality of  
6 the lack of any requirement that immigration judges consider ability to pay. Due  
7 process requires that immigration detention be "reasonabl[y] relat[ed]" to the  
8 purposes of preventing flight and danger to the community. *Zadvydas*, 533 U.S. at  
9 690-91. Failure to appear rates for respondents released on bond and alternative  
10 conditions are relevant to whether immigration judges' bond determinations, given  
11 the lack of a requirement to consider ability to pay and possible alternative  
12 conditions, satisfy that constitutional standard. For example, the requested  
13 information will enable the Court to determine whether individuals released on non-  
14 monetary alternatives appear at rates similar to individuals released on bond, and  
15 therefore whether the Government's failure to consider alternatives is reasonably  
16 related to its interests in preventing flight.

17       The Government objects to Interrogatories No. 5 and No. 8 as unduly  
18 burdensome because "[f]ailure to appear rates for individuals released pursuant to 8  
19 U.S.C. § 1226(a) are not captured in the relevant databases." The Government  
20 therefore suggests that "the requested information will need to be processed  
21 manually, likely at great cost and with a significant workforce effort" and that  
22 "information related to detainees who do not appear for subsequent immigration  
23 court appearances would be maintained by EOIR, not ICE." The relevant

---

24  
25 <sup>7</sup> In fact, the percentages cited by the Government may not support its  
26 position, since they appear to include all non-detained respondents, not only  
27 respondents released pursuant to bond or conditions set by an immigration judge.  
28 This underscores the importance of a response to Interrogatory No. 4, which would  
provide information on the persons who performed the relevant calculations and the  
steps they took to perform those calculations.

1 interrogatories do not request manual case-by-case processing of information. The  
2 calculation of failure to appear rates using EOIR database information is  
3 straightforward and routine. The government itself cited a calculation of this type in  
4 its opening brief on appeal before the Ninth Circuit. *See* Opening Brief of  
5 Defendants-Appellants 37. Others have performed similar calculations as well. For  
6 example, the Transactional Records Access Clearinghouse has calculated failure to  
7 appear rates in immigration court *for the entire country since 1995*—a calculation  
8 that it completed without manual review of the hundreds of thousands of cases at  
9 issue. *See* TRAC Immigration, What Happens When Individuals Are Released on  
10 Bond in Immigration Court Proceedings, Sept. 14, 2016,  
11 <http://trac.syr.edu/immigration/reports/438/>.

12 In sum, information on failure to appear is relevant and its production is not  
13 unduly burdensome. At the parties' various conferences, Plaintiffs explained their  
14 position to Defendants, but Defendants refused to produce any information based on  
15 their objection that discovery was not appropriate in this case.

16 2. Plaintiffs' Position on Remaining Objections.

17 Plaintiffs' position regarding Defendants' contention that no discovery should  
18 take place in this case is addressed *supra* Section I.A.1.

19 C. Defendants' Contentions

20 [TO COME FROM DEFENDANTS]

21 **XLIV. INTERROGATORY NO. 3 TO DOJ:**

22 Identify the source of the data and the steps taken to calculate the statistic that  
23 "41 percent of [noncitizens] released on conditions fail to show up for their  
24 Immigration Court hearings," Opening Brief of Defs.- Appellants at 37, *Hernandez*  
25 *v. Lynch*, No 16-56829 (9th Cir. Feb. 1, 2017), ECF No. 13, as stated on P3 of the  
26 EOIR, FY2015 Statistical Yearbook, available at  
27 <https://www.justice.gov/eoir/page/file/fysb15/download>, and the statistic that 39

1 percent of noncitizens released from custody fail to appear for immigration court  
2 proceedings, as stated on P3 of the EOIR, FY2016 Statistical Yearbook, available at  
3 <https://www.justice.gov/eoir/page/file/fysb16/download>, including any  
4 DATABASES or DOCUMENTS relied upon (including the relevant fields in any  
5 DATABASES), the methods used to extract any relevant statistics or data from those  
6 DATABASES or DOCUMENTS (including any reasons why those methods were  
7 chosen), any formulas used to calculate the statistic (including any rationales why  
8 those formulas were chosen).

9       **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 3 TO**  
10       **DOJ:**

11       Defendants object to Interrogatory No. 3 as premature, vague, overbroad as to  
12 scope, and ambiguous with respect to its request to identify “the steps taken to  
13 calculate the statistic.” The term “steps” is undefined, and it is thus unclear what  
14 information Plaintiffs seek to obtain.

15       Defendants further object that the seven subparts of Interrogatory No. 3  
16 constitute seven separate and discrete interrogatories.

17       Defendants further object to Interrogatory No. 3 to the extent it calls for the  
18 disclosure of information already in Plaintiffs' possession or which is readily  
19 available from a source that is equally accessible to Plaintiffs.

20       Defendants further object to Interrogatory No. 3 as unduly burdensome and  
21 disproportionate to the needs of the case. The lawsuit is a constitutional challenge to  
22 8 U.S.C. § 1226(a) and (e). In such a challenge, the key legal issue is whether 8  
23 U.S.C. § 1226(a) is constitutional, where it provides that consideration of ability to  
24 pay and alternatives to detention when setting an alien's initial bond is a  
25 discretionary determination; does not require that an alien who is determined to  
26 present a flight risk have an initial bond set below the \$1,500 statutory minimum;  
27 and does not require consideration of alternatives to a full cash bond, or alternatives

1 to detention when setting an initial bond for an alien who is determined to present a  
2 flight risk.

3 The controlling precedents of the U.S. Supreme Court, the U.S. Court of  
4 Appeals for the Ninth Circuit, Board of Immigration Appeals (“BIA”), and  
5 congressionally-enacted statutes do not require consideration of ability to pay and  
6 alternatives to detention when setting an alien’s initial bond. Moreover, aliens  
7 detained under 8 U.S.C. § 1226(a) who are determined to be a flight risk are not  
8 entitled to have a bond set below the \$1,500 statutory minimum, alternatives to a full  
9 cash bond, or alternatives to detention. *See, e.g., Prieto-Romero v. Clark*, 534 F.3d  
10 1053, 1067 (9th Cir. 2008). It is well-settled there is no constitutional right to release  
11 on bond while removal proceedings are pending and, except for unusual  
12 circumstances, an alien only has rights afforded by Congress. *See generally Carlson*  
13 *v. Landon*, 342 U.S. 524, 538 (1952).

14 The statute is clear. Congress committed to ICE officials and immigration  
15 judges the unreviewable discretion to continue to detain an alien during removal  
16 proceedings, to release an alien on bond and conditions, or to conditionally parole  
17 aliens detained under 8 U.S.C. § 1226(a). *See* 8 U.S.C. §§ 1226(a) and (e);  
18 1252(a)(2)(B) and (f)(1). Plaintiffs are claiming a deprivation of a “right” they are  
19 not entitled to: the weight that is accorded to their ability to pay during an initial  
20 bond hearing under 8 U.S.C. § 1226(a). At their initial bond redetermination  
21 hearings, Plaintiffs were provided a reasonable opportunity to present evidence,  
22 witnesses, and testimony to meet their burden of demonstrating their eligibility for  
23 release. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). Therefore, because  
24 Plaintiffs cannot demonstrate that their bond hearings were “so fundamentally unfair  
25 that the alien was prevented from reasonably presenting his case,” there is no  
26 violation of a constitutional right. *See Platero–Cortez v. INS*, 804 F.2d 1127, 1132  
27 (9th Cir. 1986) (quoting *Lopez v. INS*, 775 F.2d 1015, 1017 (9th Cir. 1985));

1 *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984)  
2 (holding that courts should uphold an agency's interpretation of a statute it  
3 administers if it is based on a reasonable construction of the statute). A plain reading  
4 of statute at issue here and judicial precedent forecloses discovery in this case.  
5 Discovery will not shed further light on this issue because, as the Ninth Circuit itself  
6 has found, the discretion comes from the statute itself. Because this case presents  
7 legal issues, disposition on summary judgment is appropriate; there are no genuine  
8 issues of fact in dispute that would benefit from discovery.

9 **B. Plaintiff's Contentions**

- 10 1. Defendants have withdrawn their vagueness objection.  
11 2. Defendants have withdrawn their objection regarding subparts.  
12 3. Defendants have withdrawn their objection regarding equally accessible  
13 information.  
14 4. Plaintiffs' position regarding Defendants' contention that no discovery  
15 should take place in this case is addressed *supra* Section I.A.1.  
16 5. Plaintiffs' position regarding the relevance of "failure to appear" rates to  
17 the parties' claims and defenses is addressed *supra* Section XLIII.B.1.

18 **C. Defendants' Contentions**

19 [TO COME FROM DEFENDANTS]

20 **XLV. INTERROGATORY NO. 4 TO DOJ:**

21 Identify any PERSONS involved in calculating the statistics discussed in  
22 Interrogatory No. 3, above. As to each such PERSON, please identify the PERSON's  
23 name, title, period of employment (or retention), and the activities they performed in  
24 connection with the maintenance, cataloguing, retention or restoration of the above  
25 described data and statistics.

26 **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 4 TO**  
27 **DOJ:**

1 Defendants object to Interrogatory No. 4 as premature, vague, overbroad as to  
2 scope and time, not relevant, and ambiguous with respect to its request to “[i]dentify  
3 any PERSONS involved in calculating the statistics discussed in Interrogatory No.  
4 3.” The term “involved in” is not defined, therefore the extent of the information  
5 Plaintiffs seek to obtain is unclear.

6 Defendants object to Interrogatory No. 4 request for the “PERSON’s name,  
7 title, period of employment (or retention), and the activities they performed in  
8 connection with the maintenance, cataloguing, retention or restoration of the above  
9 described data and statistics” as not relevant to the claims or defenses in this case.  
10 Moreover, the PERSONS who analyze EOIR’s statistics do not maintain EOIR’s  
11 data collection systems, and are not responsible for “cataloguing, retention or  
12 restoration” of data, which is a function of a separate division of EOIR. Because this  
13 case presents legal issues, disposition on summary judgment is appropriate; there are  
14 no genuine issues of fact in dispute that would benefit from discovery.

15 **B. Plaintiff’s Contentions**

- 16 1. Defendants have withdrawn their vagueness objection.  
17 2. Plaintiffs’ position regarding Defendants’ contention that no discovery  
18 should take place in this case is addressed *supra* Section I.A.1.  
19 3. Plaintiffs’ position regarding the relevance of “failure to appear” rates to  
20 the parties’ claims and defenses is addressed *supra* Section XLIII.B.1.

21 **C. Defendants’ Contentions**

22 [TO COME FROM DEFENDANTS]

23 **XLVI. INTERROGATORY NO. 5 TO DOJ:**

24 Identify any reports or statistics CONCERNING the FAILURE TO APPEAR  
25 RATE for PERSONS detained under 8 U.S.C. § 1226(a), who were released on  
26 IMMIGRATION BONDS and/or ALTERNATIVE CONDITIONS OF RELEASE  
27 pursuant to a CUSTODY REDETERMINATION HEARING, at any time during the  
28



1 Relevant Time Period. DEFENDANT shall specify whether an IMMIGRATION  
2 DETAINEE did not appear for subsequent immigration court appearances, otherwise  
3 violated the terms of their release, or did not appear for removal, if ordered to do so.

4       **A. DEFENDANTS' RESPONSE TO INTERROGATORY NO. 5 TO**  
5       **DOJ:**

6       Defendants object to Interrogatory No. 5 as premature, unduly burdensome,  
7 not relevant, overbroad as to time, and disproportionate to the needs of this case.  
8 EOIR has no reports or statistics responsive to this request.

9       Defendants further object to Interrogatory No. 5 on relevance grounds.  
10 Reports or statistics concerning the failure to appear rate for immigration detainees  
11 detained under 8 U.S.C. § 1226(a), who were released on immigration bonds and/or  
12 alternative conditions of release, are not relevant in determining the legal issues to be  
13 resolved in Plaintiffs' lawsuit.

14       Defendants object to Interrogatory No. 5 as unduly burdensome to the extent it  
15 requests that the agency prepare such reports or statistics and is disproportionate to  
16 the needs of the case. The data sought requires significant manual, case-by-case  
17 review to locate, extract, and process the requested information because the  
18 requested information is not readily identifiable given the capabilities of the EOIR  
19 database. Plaintiffs request data concerning "PERSONS detained under 8 U.S.C. §  
20 1226(a), who were released on IMMIGRATION BONDS and/or ALTERNATIVE  
21 CONDITIONS OF RELEASE pursuant to a CUSTODY REDETERMINATION  
22 HEARING." This requested information is not readily identifiable given the  
23 capabilities of the EOIR database. In order to compile the requested information,  
24 Defendants must first retrieve from its database a list of all those who have been  
25 detained, whether under 8 U.S.C. § 1226(a) or otherwise. The EOIR database does  
26 not specifically track individuals by which detention authority they are detained  
27 under, so a simple query containing the variables in Plaintiffs' request would not  
28

1 suffice. To provide a list of only those detained under 8 U.S.C. § 1226(a), Defendant  
2 would need to embark on a time and labor intensive review of the paper record for  
3 each respondent on the detainee list originally retrieved. Once the requested list of  
4 individuals is deduced, it then would require case-by-case processing to extract the  
5 requested information and then review and produce it. There are likely thousands of  
6 immigration detainees that have been detained pursuant to 8 U.S.C. § 1226(a).

7 Therefore, the requested information will need to be processed manually, at  
8 great cost and with a significant workforce effort, and would be an undue burden on  
9 Defendants that outweighs any benefit likely to be garnered by Plaintiffs. Because  
10 this case presents legal issues, disposition on summary judgment is appropriate; there  
11 are no genuine issues of fact in dispute that would benefit from discovery.

12 **B. Plaintiff's Contentions**

13 1. Defendants have withdrawn their contention that they have no reports or  
14 statistics responsive to this request.

15 2. Plaintiffs' position regarding the relevance of "failure to appear" rates to  
16 the parties' claims and defenses is addressed *supra* Section XLIII.B.1.

17 3. Plaintiffs' position regarding Defendants' contention that no discovery  
18 should take place in this case is addressed *supra* Section I.A.1.

19 **C. Defendants' Contentions**

20 [TO COME FROM DEFENDANTS]

21 DATED: November 9, 2017

22 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
23

24 By: /s/ Douglas A. Smith  
25 Douglas A. Smith

26 Attorney for Plaintiffs Hernandez and Matias, and a  
27 certified class of similarly situated individuals  
28